

# E. M. “AL” GUNDERSON

Interviewee: E. M. “Al” Gunderson

Interviewed: 2002

Published: 2013

Interviewer: Patrick Carlton

UNOHP Catalog #226

## Description

Elmer Millard “Al” Gunderson was born August 9, 1929 in Minneapolis, Minnesota. His oral history skips around in time and place as he bounced from high school to high school, finally obtaining a GED; starting and stopping college; serving in the military as a paratrooper in the Korean conflict; spending time in Las Vegas; returning to college; and, finally, attending law school at Creighton University School of Law in Omaha, Nebraska (1956).

After law school, Gunderson studied at the Lawyers’ Institute and worked at the Federal Trade Commission in Chicago. Returning to Las Vegas in 1957, he practiced law with Leo McNamee and Sam Lionel, early mentors. In his oral history, he openly enjoys colorful stories and his brushes with “so-called underworld” figures. In 1970, Gunderson filed for his first election to the Nevada Supreme Court, and won his seat, he says, by “outworking” his opponent, who had been picked by the Reno legal establishment.

Justice Gunderson’s eighteen-year tenure on the Nevada Supreme Court was not without controversy, and he does not shy away from that controversy in his oral history. Upon Justice Gunderson’s death, U. S. Senator Harry Reid said that no one was tougher, funnier, or worked harder than Gunderson did. Praised by some, vilified by others, Justice “Al” Gunderson’s place in Nevada legal history is unique.

The oral history interviews with retired Justice E. M. “Al” Gunderson of the Nevada Supreme Court were part of the Nevada Legal Oral History Project, a joint effort of the Nevada Judicial Historical Society, the Ninth Judicial Circuit Historical Society, and the University of Nevada Oral History Program.



**E. M. “AL” GUNDERSON**

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An Oral History Conducted by Patrick Carlton  
Edited by Patricia A. Cooper-Smith

University of Nevada Oral History Program

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Printed in the United States of America

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## CONTENTS

Preface	ix
Introduction	xi
1. Growing Up in Minneapolis and Omaha	1
2. College and Law School	11
3. Practicing Law in Nevada	19
4. Running for Judicial Office	35
5. Serving on the Court	43
6. Judicial Discipline Commission	47
7. Duties of the Chief Justice	55
8. Decision to Leave the Court	57
9. Group Dynamics on the Court	61





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## PREFACE

Established in 1964, the University of Nevada Oral History Program (UNOHP) explores the remembered past through rigorous oral history interviewing, creating a record for present and future researchers. The program's collection of primary source oral histories is an important body of information about significant events, people, places, and activities in twentieth and twenty-first century Nevada and the West.

The UNOHP wishes to make the information in its oral histories accessible to a broad range of patrons. To achieve this goal, its transcripts must speak with an intelligible voice. However, no type font contains symbols for physical gestures and vocal modulations which are integral parts of verbal communication. When human speech is represented in print, stripped of these signals, the result can be a morass of seemingly tangled syntax and incomplete sentences—totally verbatim transcripts sometimes verge on incoherence. Therefore, this transcript has been lightly edited.

While taking great pains not to alter meaning in any way, the editor may have removed false starts, redundancies, and the “uhs,” “ahs,” and other noises with which speech is often liberally sprinkled; compressed some passages which, in unaltered form, misrepresent the chronicler's meaning; and relocated some material to place information in its intended context. Laughter is represented with [laughter] at the end of a sentence in which it occurs, and ellipses are used to indicate that a statement has been interrupted or is incomplete...or that there is a pause for dramatic effect.

As with all of our oral histories, while we can vouch for the authenticity of the interviews in the UNOHP collection, we advise readers to keep in mind that these are remembered pasts, and we do not claim that the recollections are entirely free of error. We can state, however, that the transcripts accurately reflect the oral history recordings on which they were based. Accordingly, each transcript should be approached with the

same prudence that the intelligent reader exercises when consulting government records, newspaper accounts, diaries, and other sources of historical information. All statements made here constitute the remembrance or opinions of the individuals who were interviewed, and not the opinions of the UNOHP.

For more information on the UNOHP or any of its publications, please contact the University of Nevada Oral History Program at Mail Stop 0324, University of Nevada, Reno, NV, 89557-0324 or by calling 775/784-6932.

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## INTRODUCTION

Elmer Millard “Al” Gunderson was born August 9, 1929 on the proverbial “wrong side of the tracks” in Minneapolis, Minnesota. A life story of never knowing an invalid father—in his own words, having met his father perhaps four times while growing up—and feeling as if he were at times an “orphan” are evident in the man he became.

From inauspicious beginnings—bouncing from high school to high school, and completing a GED—Gunderson rose to Chief Justice of the Nevada Supreme Court. A 2010 memoriam in *Nevada Lawyer*\* lays out a concise picture of a man who made strong friends *and* enemies throughout a tumultuous life and legal career.

Justice Gunderson’s oral history is an expansive testimony that skips around in time and place. He describes starting college, interrupting school for military service as a paratrooper in the Korean conflict, spending time in Las Vegas, going back to college, and, finally, attending law school at Creighton University School of Law in Omaha, Nebraska (1956).

A childhood friend’s father, a bookmaker, gave “Al” Gunderson a Las Vegas entrée to Davey Berman a.k.a. “Davey the Jew,” who ultimately “took over the Flamingo Hotel... the morning after someone sent Mr. [Bugsy] Siegel to heaven.” Berman gave “Al” his first job in Las Vegas as a casino shill.

After law school came advanced legal studies at the Lawyers’ Institute, work at the Federal Trade Commission in Chicago, and the Chicago Chess and Checker Club, where Justice Gunderson equates the strategy and tactics of chess to warfare and legal practice.

Returning to Las Vegas in 1957, Gunderson worked with Leo McNamee and Sam Lionel, both early mentors. Joining the Clark County Jaycees rewarded him with friends, alliances, clients, and, more importantly, statewide support when he later decided to run for the Nevada Supreme Court. Justice Gunderson openly enjoys colorful stories and his

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\*M. Scott McKenna, “In memoriam: Hon. E. M. “Al” Gunderson (1929-2010),” *Nevada Lawyer*, June 2010: 50.

brushes with "so-called underworld" figures. His narration of representing hotel-casino owners, developers, and the Teamster's Union are the *vigorish*—a casino industry term for payoff—for delving into this oral history.

In 1970, when Justice Gunderson decided to run for an open seat on the Nevada Supreme Court, he did so in opposition to the Reno legal establishment that, according to him, had historically been kingmakers to the court. When he won the seat by "outworking" his opponent, it was a surprise to the "silk-stocking set." In 1989, after eighteen years on the bench, with thousands of cases under his belt, and having been instrumental in creating the Nevada Judges Foundation, Justice Gunderson retired.

Justice Gunderson's tenure on Nevada's highest court (1971-1989), according to journalist Brian Greenspun, was during "some of its darkest days when national attention was focused on Nevada justice run amok." His battles with the Nevada Judicial Discipline Commission became legend in the state and national press of the day. In his oral history, Justice Gunderson does not shy away from controversy or controversial opinions. Another Las Vegas journalist, John L. Smith, described him as "an almost mythical American character come to life, a pugnacious courthouse colossus who, as chief justice... never ducked a donnybrook and meted out Nevada-style justice honorably and with either fist."

Upon Justice Gunderson's death, U. S. Senator Harry Reid said that no one was tougher, funnier, or worked harder than he did. In his time on the bench, Senator Reid said that Gunderson "steered it away from elitism and shaped it as a forum for everyday Nevadans." Praised by some, vilified by

others, Justice "Al" Gunderson's place in Nevada legal history is unique.

For readers who are interested in examining the unaltered records, copies of the recorded interviews are available in the Special Collections department of the UNR Library.

Patrick Carlton conducted this oral history interview with retired Nevada Supreme Court Justice E. M. "Al" Gunderson on December 4, 2002, at Gunderson's home in Las Vegas, Nevada as part of the Nevada Legal Oral History Project, a joint effort of the Ninth Judicial Circuit Historical Society (NJCHS), the Nevada Judicial Historical Society (NJHS), and the UNOHP. Begun in 2001, the project was intended to record the life stories of leading members of Nevada's legal profession and to educate the public about law and the courts by making those stories widely available through various media.

Members of the boards of NJHS and NJCHS compiled and vetted lists of potential narrators, ultimately selecting representatives from both the state and federal benches and bars. The UNOHP, under the direction of Tom King and his successor Mary Larson, recommended interviewers, most of whom were professional oral historians, and donated equipment and transcription services. Brad Williams, of NJCHS, coordinated the project from its inception. Susan Southwick, of NJHS, oversaw that group's participation. Patricia Cooper-Smith completed the copyediting and introductions. Alicia Barber, Director of the UNOHP since 2009, supervised the project's final publication and dissemination. The project was made possible by a generous challenge grant from the John Ben Snow Memorial Trust, with matching funds provided by the U.S. District

Court for Nevada Attorney Admissions Fund, the Washoe County Courthouse Preservation Fund, and the Nevada State Bar. Thanks go to Susan Southwick and the Board of Trustees of NJHS, and to Patrick Carlton, who interviewed Justice Gunderson.

Patricia A. Cooper-Smith  
Carson City, Nevada  
May 2013





JUSTICE E. M. "AL" GUNDERSON,  
NEVADA SUPREME COURT

*(Courtesy of Nevada State Library and Archives)*





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## GROWING UP IN MINNEAPOLIS AND OMAHA

*Patrick Carlton: This is Wednesday, December 4, 2002. I'm interviewing Justice E. M. Gunderson in his home in Las Vegas, Nevada. Justice Gunderson, I wonder, sir, if you would please give your full name and your date and place of birth.*

E.M. Gunderson: It's Elmer Millard Gunderson. I was born in Minneapolis, Minnesota, August 9, 1929.

*Would you please start off, sir, by talking a little about your family ties? Maybe mention who your grandparents and your parents were; to the extent that you're willing, give us the place and dates of their birth and maybe something about their business connections and community service.*

Well, my mother was a Missouri farm girl who grew up on a farm outside the little Missouri towns of Gorin and Rutledge, Missouri, and subsequently worked her way through college—actually attended several colleges down there in Missouri—and

eventually graduated from Park College in Parkville. When I say she worked her way through, she did primarily domestic work for particularly doctors. The common place for finding domestics in those days was to take in farm girls who wanted to attend school, and that's how my mother managed to get her university education. She educated herself as a teacher of French and domestic science and after graduation taught in various places, particularly then in Iowa, in Cedar Rapids, I believe, when she became acquainted with my father, who was the brother of one of her teaching colleagues.

My father was the son of Norwegian immigrants and was born in Wisconsin, although the family home was moved into Iowa. He attended schools in Waukon, Iowa, and eventually attended school, university at Drake, which is in Des Moines. He was apparently quite an outstanding student, and they tried to qualify him for the Rhodes scholarship, but he had never participated in sports, because as the Norwegian farm boy, he was expected to work on the farm

anytime he wasn't in school, so he couldn't play sports. And one of the criteria that Cecil Rhodes had written into the protocols for the Rhodes scholarship was that selectees should be well-rounded people. Since he had not been an athlete, although apparently the school administration at Drake tried to pretend he was, he didn't make the cut for the Rhodes scholarship. They tried to put him on the baseball team, but apparently that was not a very successful venture. And when his nomination was submitted to the Rhodes scholarship committee, he was not selected, which was apparently a very serious disappointment to him in his life.

Shortly thereafter, he dropped out of school and went in the service in World War II. During my childhood I did not know anything very much about his military career. Only later, when I viewed the gravestone that the Veterans Administration put on his grave at Fort Snelling cemetery outside of Minneapolis, did I learn that he had been a master sergeant, a top sergeant, in the artillery battery with which he had served. And frankly, that was an occasion of great pride to me when I found that he had distinguished himself in that way.

My mother taught there at Cedar Rapids with his sister and through his sister became acquainted with him in the mid-1920s. Eventually they were married and moved to Minneapolis, which is where I was born. I was born in the Swedish hospital there in Minneapolis. There was no ethnic prejudice then against Norwegians by the Swedes. [laughter] Although there always has been a great deal of good-natured kidding between the citizens of the two respective countries. I was born there, as I said, August of 1929. I think within about six months, my father was hospitalized in the veterans hospital, and he

remained there for some thirty-some years until he died of a stroke in the early 1960s, as I recall. I only saw my father a total, I think, of four times during the period that I was growing up. One was when I was about three, and my mother induced someone to drive us out to the veterans hospital, which was about sixty miles away from Minneapolis. And I remember sitting on his lap.

Later, after I graduated from law school, the government sent me on an investigation to the city of where the hospital was located. I availed myself at that opportunity to go out and see my father. That was the second time I saw him. When I got back to Minneapolis, my mother asked me if I would drive her out to the hospital, so she could see him. And I did. That was the third time I saw him. The fourth time I saw him, he was dead and in his casket after he had died while still in the hospital. We went up and had a brief ceremony there in the town where the hospital was located. My mother and I brought his body back and buried him at Fort Snelling, in the veterans cemetery there.

It wasn't until my mother died a number of years later and I had buried her there next to him in the Fort Snelling National Cemetery, that I came back. We buried him in the winter; it was ungodly cold. We came back in the summer to visit her grave, and by that time they had a headstone, one of the standard headstones for both him and for her. His identified him as "Master Sergeant Elmer Peter Gunderson"—I believe they had his middle name—with his artillery battery indicated on it. One thing that sticks out in my mind, that probably Gloria Steinem would think was pretty chauvinistic, she was identified on hers as "Carmeleta"—her mother had been reading a Spanish novel when she was expecting with my mother. She

was identified as “Carmeleta, wife of Elmer,” and the period of her time on earth was indicated by numbers. Every woman buried there in that cemetery next to her husband was identified in the same way, by her first name and the fact that she was the wife of the soldier she was buried next to. While I suppose there are those that would view that as a pretty chauvinistic kind of thing, it seemed to me kind of appropriate that two people who had been joined in their lives would be identified in that way. Although she had not spent much time with him in the last years of her life, I had learned from her that from time to time she had slipped off and gone to visit him in the hospital when I didn’t even know about it. When she was in her last days, she was very adamant that she wanted me to bury her next to him in that cemetery. So she regarded herself as the wife of Elmer to the end. I thought for *them* it was very appropriate that that was the way she was identified, and it was good to realize, as I knew, that she had loved him to the end and wanted to be with him, if you will, throughout eternity.

That was when I learned that my father had been a master sergeant, a first sergeant, as we typically call him, in the service. And having served in the military myself, that made me very proud, since I knew that he had been deprived of the academic recognition that he had sought but apparently had been recognized for his ability as a military man, which was very good for me to know.

But essentially I grew up then in Minneapolis from the time he entered the hospital. I attended Minneapolis schools with the exception of a period of time that I spent with my uncle, his younger brother, in Omaha. My uncle was a professor of bacteriology and head of the Department of Pathology and Bacteriology at the University

of Nebraska Medical School. When my mother found herself unable to cope with all of the burdens of single parenthood, she sent me down when I was seven years old to live with my uncle and my aunt, who was British, in Omaha. We lived basically kitty-cornered across the street from the medical school, next to the Phi Rho fraternity house.

One of my little industries—perhaps I should call them “rackets”—was to sell magazines to the medical students at the Phi Rho house and the other fraternity houses. [laughter] I just went door-to-door to the various fraternity houses, where it was recognized that I was Gundy’s nephew. And all the students were ready to chip in to buy my magazines. Upon my departing with their money and leaving them with my magazines, they’d say, “Remember me to Gundy! Remember me to Gundy!” [laughter]

*Your uncle’s full name was what, now?*

Millard Fillmore Gunderson. He was named after that famous nonentity president, Millard Fillmore, who, I guess, was a politician of apparent note in the papers, though I don’t think there’s very many people who would be able to tell you who Millard Fillmore was today! [laughter]

Anyway, I took a couple of pictures down from the wall just to show you. I know we can’t reflect this on the tape, but here is a picture of my grandfather and grandmother next to the log house that they had constructed. I believe this is outside of Martell, Wisconsin. There’s my father and my two aunts, Myrtle and Alma. If you look closely at my grandmother, you’ll see that my father’s younger brother is on the scene but not yet born. He is just pooching out my grandmother’s skirt a little bit there.

*Right. [laughter] Oh my.*

This is another picture of the family. My father home on leave from the service, not yet a sergeant, with my grandfather, my grandmother, and his two sisters, and his younger brother, Millard Fillmore.

*Fine-looking gentleman.*

Yes. He was a good-looking man. That's not one of his better pictures. I've got a few more, but he was a good-looking man. So that's where the Gundersons came from.

*Did you have brothers and sisters?*

I had a sister. Her name was Helen. She was a couple of years older than I was, born February 20, 1927. She died under circumstances that have never been fully understood. She was found frozen in a snowbank when I was in the University of Minnesota. She was a gal that was interested in literature and had some published poetry. She would have voted for Clinton and not for Bush and probably would have voted for Gore and not for George W. Bush.

*You mentioned your uncle Gunderson, the professor. Were there other uncles in your life as a young person?*

Well, my mother was one of sixteen children, and there were sisters and brothers in that bunch. But they were dispersed around the country, and were never a significant influence in my life.

*Now, when you were a young person, of course, you mentioned being part of a single-parent home there. What kinds of recreation did you engage in, and who were your friends as a young person?*

Well, my friends, generally speaking, were boys like myself, pretty much on the social fringe, who did not have visible fathers. Our recreation consisted pretty much of running around, looking for what mischief we could find. I had two or three friends that were pretty memorable to me, and one of them is a person who is consequential in my ultimately coming to Las Vegas. He was the son of a bookmaker in Minneapolis who had a cigar store downtown that didn't worry about how fresh its cigars were, since that was not his paramount source of income.

The way I met him was some of the other kids that I ran around with at night, getting into mischief, we were engaging in a game of follow the leader one night, and the leader, a guy by the name of Kenny, decided to lead us over the roof of a house that had a trellis going up one side. So we crawled up; he led us up the trellis and over the roof, and then we came down, and he had led us down under the garage roof and through the basketball net that was hooked to the garage. And apparently, my friend Buddy and his father heard something on the roof, and since he was a bookmaker, and he was one of the people that were connected to a guy that ultimately became well-known in Las Vegas, a fellow by the name of Davey Berman, who was known in . . . I don't want to say criminal circles, but I don't know another quick way to characterize it.

Davey Berman was, in a sense, the mob boss of Minneapolis and was commonly known as "Davey the Jew." My friend and his father were Jewish. I first heard about Davey Berman through my friend's father, who was very proud to be associated with him. Davey Berman ultimately came out here and took over the Flamingo Hotel, along with Little Moe Sedway, the morning after someone sent

Mr. Siegel to heaven down there in Beverly Hills. If you recall, he was sent to heaven or someplace by his associates for reasons that have been speculated about for many years. He was killed by a military carbine in his paramour's residence down there in Beverly Hills. Her name was Virginia Hill.

In any event, when Mr. Siegel died—I'll call him Mr. Siegel, since he hated the name "Bugsy," and to be respectful—Davey Berman was one of those that went in and took over the Flamingo after Bugsy went to heaven or wherever. But he remained a very much respected man with his former associates in Minneapolis, particularly my friend's father.

He really was a remarkable guy, and I'll just take a moment to tell you about him. He came out here in and became something of a philanthropist, and he became president of the temple here, among the founders of the temple. His daughter wrote a book called *Easy Street*. Her name is Susan Berman, and she eventually got a master's at the University of California at Berkeley. That book basically sets forth her research about her father after his death and after the death of her mother. I think you'd enjoy that.

Davey Berman was quite a militant Jew that was highly resistant to anyone that he thought was anti-Semitic. He led his associates on forays to suppress the activities of the Brownshirts in Minneapolis when the Neo-Nazis and the Brownshirts were endeavoring to bring a Nazi attitude into this country. They would visit meetings that the Brownshirts were organizing and discipline them. He and people like Willie Alderman, who was known as "Ice Pick Willie" Alderman, and I gather my friend's father, who under his auspices ran a place called the Fourth Street Cigar Store, where I learned to play gin rummy. When Davey sent out the word, they would assemble

to teach their view of rectitude to Brownshirts. And eventually, Davey Berman, who, as I say, was really quite a remarkable guy, decided that he wanted to go to Europe and fight. So although he was the paramount boss, as far as gambling was concerned, in Minneapolis, he tried to join up. He said he wanted to kill ten Nazis for every Jew that was killed. Of course, the word was out in those days that there was something going on ugly over in Germany, and that was the beginning of the Holocaust. But he was rejected, and I guess that was due both to age and his criminal record, which related to a kidnapping that he had allegedly participated in back in New York. You know, in those days the mobsters liked to augment their income by kidnapping each other.

Davey went back there to help some of the people who lived in Brooklyn. He was affiliated with them as a result of his bootlegging activities throughout the Middle West and his gambling activities. So he ultimately had gone back there and participated with a group of people that were involved in kidnapping and was arrested and given an opportunity to make a deal if he would identify who his associates were. But he declined, and when they told him how long they figured they could put him in jail for, Davey became quite famous by saying, "The most you can give me is life." And that made him a stand-up guy, of course! [laughter]

And when he got through with his prison time, which was about seven years—he never cracked and never tried to make a deal for himself—he came out, and the story is that he asked Meyer Lansky for Minneapolis. He wanted the gambling in Minneapolis. And they agreed that he warranted that concession, [laughter] so he received the gambling concession in Minneapolis and went back there, and like many of his friends, he found a



pretty, little gentile girl who ultimately became Susan Berman's mother.

They lived in Minneapolis until Davey decided to try to go in the service. When the United States military would not accept him because of his criminal record and his age, he went to Canada and signed up and fought with the Canadian infantry throughout World War II and was wounded and decorated and came back from service. But by that time there was a reform administration running Minneapolis. Whether they were any less crooked than the prior administration, who knows? But the climate had changed in Minneapolis. So then he was sent out here. First, he was an owner of the El Cortez Hotel. Then after his and others' interests in that hotel were sold, he was one of the licensees at the Flamingo and ran that. He was running the Flamingo; he went in there to take it over when Bugsy was dispatched to heaven. He continued to run that until he took over as the guiding force behind the Riviera. Well, really, because of his militancy and the militancy of my friend's father, that really figured into how I came out here.

When I became friends with Buddy, as I think I had started to tell you, we were coming down, following the leader, through the basketball net. And when I got down to the bottom, I saw a pretty heavyset man standing there with a rifle, apparently having heard us coming over the roof. They had a dog there, and he was yapping at us, and that's when I first met my friend Buddy and his father. Because it was certainly obvious that we were just kids playing, you know. [laughter]

So after that, after school, I recognized Buddy, and we started laughing, and we became friends and started hanging out together. He was one of the people that I hung out with quite a bit when I was kid, not only around the neighborhood, but we would go down and play cards at my friend's father's

cigar store, which was called the Fourth Street Cigar Store. I think Susan Berman, in confusion in her book, refers to it as the Fifth Street Cigar Store. But it was right across from the Vendome Hotel right across Fourth Street. [laughter] I wonder. I don't know if the Vendome is still there, but it had a wonderful, old pool room behind the lobby. We would walk over across the street, Buddy and I, when we were tired of playing gin, and go in and play pool at the Vendome. Then Buddy's father at night, when he would close up the cigar store, would sometimes take us to one of the Chinese restaurants around there. It's always seemed to me, and I don't know if this is true everywhere in the United States, but it's always seemed to me that it's part of the culture around bookmakers that they like Chinese food—hot pork and hot mustard. Buddy's father would take us over to the Nan King and other Chinese restaurants. It was a lovely time from my standpoint, because being essentially in the position of an orphan, it was the most masculine adult company that I had, and he treated me very well. I became very fond of him, and I think he became very fond of me.

One day we were walking down the street, Buddy and I, and some kids were coming the other direction and called him a name that is an ugly ethnic slur. We looked at each other; we knew immediately that we were going to take action, and we did. I was wrestling in high school at the time, and I grabbed one of them and threw him into the snowbank and pushed his head into the snowbank and held it there as long as I figured he was going to be able to take it. Then he ultimately decided that he wanted to take back what he said. Well, that really endeared me to Buddy's father, [laughter] because this is exactly what he and the others in Davey Berman's crew would have thought ought to be done. So he had always

been good to me, but from that time on I think I was special to him, and Buddy and I were very close.

Eventually Buddy, without telling me, one summer, when he was sixteen and I was sixteen, he lied to go into the service and wound up as a jump master in the paratroops at Fort Benning and had really quite a large number of jumps, because being a jump master, he could jump anytime he wanted to with the crew. [laughter] When I discovered that he was gone, I joined up with another good friend of mine, who remains a good friend to this day, who's now retired in Florida, and ultimately, after we were transferred to Japan, we joined the Eleventh Airborne over there. I went to jump school at a place called Yamota in Japan.

*This would have been what year, now?*

Well, that would have been the latter part of 1946. Actually, I didn't start jump school until February of 1947. My first jump, I believe, was on the first or the second of February of 1947. I broke my ankle on that jump and spent two months in the hospital at the station hospital at a place called Camp Schimmelpenninck, which was a Japanese base that the Eleventh Airborne had been assigned to take over on northern Honshu. So when I got out of the hospital, I was determined to finish jump school and earn my wings. And I went back to my company and trained with my company, all of whom by that time were qualified paratroops. I didn't yet have my wings, but I trained with them, which was probably a wonderful thing, because I got my leg back in shape. I walked up and down those Japanese mountains, which are really interesting hills! [laughter] Quite steep. And you walk up and down them for a few months with full field pack, if you got a problem with

your leg, it's probably going to cure you by the time you're through with that. [laughter]

So then I was offered the opportunity to finish my qualifying jumps, one at a time, with my company. They sent me down to get an examination. The medic that looked at me . . . I figured that it would be a problem, and he asked me how my leg was and he wanted to look at it. I figured that he might be reluctant to let me jump, so I showed him the other leg. He let me get up on the table to jump off on my bad leg, and I jumped off on the good leg. Naturally, I did that very well—no problem at all. So he sent me back to duty, and I then proceeded to make my remaining jumps with my company, and I got my wings. They're someplace around—out in the hall, I guess.

As a matter of fact, I'll show you in a minute, if you like, the pictures of my company and some pictures taken while we were jumping. But I qualified and spent the balance of my enlistment tour with the same company.

*You said Camp Yamota. Is that near a large city?*

No. No. It was actually near Sendai, but we jumped in a valley, and the distinguishing characteristic was that in the hills above the valley there were Japanese pillboxes that they had constructed there with the expectation of making a final stand there and costing the Americans dearly if there was an invasion. But, of course, as you know, there was no invasion because Truman authorized the dropping of the atomic bomb.

And I will say, one of the things that has impressed me about my tour of duty there, I got over there when the country was still on the cigarette and Hershey bar standard. But I really admire General MacArthur, because he was very strongly disposed to seeing

that the Americans behaved themselves and that we did not abuse or injure the Japanese people. I've always thought this country owed MacArthur a great deal for his leadership in trying to help rebuild the Japanese spirit and the Japanese economy and keep the Americans from doing damage to our country's relationships with the Japanese. MacArthur, I think, was a great man.

But all things considered, my time in Japan was a wonderful experience. There are a couple of things that I remember. Of course, I trained almost a . . . well, over a full year doing nothing, but in addition to my jump training, my glider training, my air-transport training, my training with almost every type of small arms that a parachute infantry company uses, doing squad tactics and company tactics and platoon tactics and battalion tactics and regimental tactics. My only regret is that before they shipped me out at the end of my term, I didn't get the expert infantryman's badge that I had earned, and that has always been something that I regretted.

But I really think that it's too bad that more kids at the age of seventeen aren't exposed to that kind of maturing experience.

*I assume that the parachutists—you all used the Browning automatic rifle as well as the Thompson gun and the carbine and the Garand?*

Yes. My personal weapon . . . . My military occupation number was 7745. The 745 stands for rifleman; the 7 before the 745 stands for parachute rifleman. So that was my official designation. But I did train on all the other weapons, the small arms.

And one of the things that, following the activities of our police departments, has always disgusted me is the number of

people they needlessly kill, it appears to me, simply because they want to kill something. They justify it because they're not taking any chances. Well, if they were worthy of being entrusted with a weapon to begin with, in my opinion, they shouldn't have to kill you with it to stop you, you know. They say, "Oh, well, we can't shoot for the leg." Why the hell can't they shoot for the leg? "We shoot for the largest part of the body," they say. "We want to go home at night." But we really don't *pay* them to decide that they're not going to take any chances, just so they can be sure they go home at night. I think that's an egregious attitude that people like Sheriff Keller inculcate in the law enforcement guys that they're entitled to shoot anybody that they feel the least bit threatened by. It bothers me. I would really be ashamed if I went out and I saw, as we've had a situation here, where some distraught person is there waving a steak knife around, and three guys show up with automatic pistols, high-velocity rounds, and they stand around him and shoot him down and can't figure out any way to take him, so they don't kill him, just because he's got a damn steak knife in his hand. And that's what we've had around here. That's what we've had throughout Nevada in other departments other than metro here in Las Vegas.

The case I just mentioned was a case in which the guy who was killed wanted to try to help his brother who was in a bad mental state and called the police out for help to try to help restrain him. Instead, they came out and killed him because he had a steak knife in his hand. Well, that was exactly the reason his brother had called for help. His brother, who was a nurse, called them for help, and in trying to help him get his brother into care at the hospital. Instead, they came out, and they gunned him down! And they justify it by saying to the press, "Oh, well, we want to



go home at night. We're not going to take any chances. A man with a knife is dangerous." Well, that's what we pay them so damn well for, and we do pay them well! They get pretty good wages for the risks that we expect them to take. And I think that what we have seen in the community here in Las Vegas and throughout the state of people being needlessly gunned down was tragic. There was an Indian kid up in Carson City not too long ago whose family called for help. He had taken a rifle and gone up onto the hill. When the Carson City sheriff's department showed up, they shot him down! That wasn't why his family called them. That wasn't the risk that they had a right to expect the police officers to take. Anyway, I'm getting diverted onto a pet peeve of mine.

*When did your tour of duty in Japan end, and then when did you come home?*

I came back in December of 1947. I had gone over through a typhoon, and I came back through a typhoon. When we got into San Francisco Bay, two prisoners that were being transferred back to the United States to be incarcerated at McNeil Island jumped overboard to try to swim to shore through the San Francisco Bay. I was there when they pulled them back. The men had started screaming, asking to be rescued. That pretty cold bay, you know. I always remember seeing those guys pulled out of the water.

But then I was mustered out of the service at Camp Stoneman, California.

*This is in 1947?*

Nineteen forty-seven.

*What was your next move from there as an eighteen-year-old person?*

Well, I flew back first to Omaha, where I had spent time in my childhood with my aunt and uncle. I stopped there to visit them and then flew home to Minneapolis.

And, of course, you recall I had quit high school to join the service. So I started high school again and was enjoying that fairly well. I also went out for wrestling, and since I had been doing some wrestling in the service, I was considerably more formidable in that realm than I had been when I left. And it was kind of enjoyable to come back and whip people that I hadn't been able to whip before.

*[laughter] And you were able to finish high school then; what year would have completed your work?*

Well, I didn't finish high school. They had a teacher strike, and I went down to Omaha and went to what they called a continuation study center that they had set up for former servicemen in Omaha that was being managed by a woman that I have always thought was really a great scholar. She knew everything, and she was able to teach everything. So I did some work that I needed to do, like geometry and some other subjects, under her at this continuation study center and eventually left Omaha, went back to Minneapolis, and decided that what I would do is take my high school and college GEDs. This is my high school equivalence certificate.

*Nineteen forty-nine.*

I also took college GED tests and entered the University of Minnesota and lived in the dormitory there for a while and worked as a parking lot attendant for the university.



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## COLLEGE AND LAW SCHOOL

*Did you declare a major immediately upon going to college?*

No. I kind of thought of myself as a pre-law student, but only because I couldn't think of anything else that I could think of myself as. I sort of thought I would wind up in law school. The one subject that I had done real well in in high school had been business law. I just seemed to have a natural knack to understand what the law was and how it was going work. So that was on my mind, and I'm sure in some of my papers I indicated that I was going to be pre-law student. But that was subject to the potential of various changes.

I went out for wrestling and was doing pretty well, but I had a disappointment in love, and I think I would have been a pretty good wrestler if my lady friend had not decided she was going to marry a guy that she thought was more stable than I was. I dropped out and eventually took flying lessons for a while. I was always very touched—when my mother died, we took her back to be buried next to my father, and we had a ceremony for her in

a funeral home in Minneapolis so that her old friends could come by to see her, and my old girlfriend showed up. I always was pretty touched about that. It'd been twenty, twenty-five years since I'd seen her, and she cared enough to come to mother's little ceremony.

*Now, once you dropped out of the University of Minnesota, how did you spend your time before Creighton?*

Well, I drove truck for Nesbitt Orange Company. I hung out with my friends, and I recall on one occasion, apparently my friend's father, who was a bookmaker, had heard that a particular high school football player was not going to be able to play, and he wanted solid information on that issue. So I went over to the high school in question and found the coach, and although I had never taken classes from him or had never been one of his team, I greeted him warmly and in such a way that he, I think, was made to believe that I was one of his students. I engaged him in conversation about the particular football player that was

alleged to be incapacitated and discovered he wasn't incapacitated at all. I reported back to my friend's father's cigar store the results of my research—I guess it was research. He later thanked me warmly and rewarded me somewhat.

I played gin rummy around the cigar store, and, as I say, I went back to playing pool at the Vendome.

*Now, had your friend—I guess his name was Buddy—had he returned also?*

Yes. He was back. So after awhile, after I had taken flying and one thing and another, I went back to the University of Minnesota and took some more courses and accumulated a few more credits. And eventually, when the spring of 1951 came, I was disposed to come out here to Las Vegas. Actually I was disposed to do almost anything that was going to provide me an adventure of some kind. But I thought I would come through Las Vegas and then go out to perhaps Los Angeles and see if I could ship out on a boat, get hired onto a boat, so that I could get some experience at sea. And my friend's father called. He said, "Well, look," he says. "If you want to go to Las Vegas, let me call Dave Berman for you. He made an introductory call to Dave Berman, who was then at the Flamingo and said, "Well, I explained to Dave Berman that you're going to come to see him when you get out there." He made it clear that he explained to Dave Berman that he was very fond of me and that I was very close to his son and that he thought, based on my rubbing that other guy's face in the snow, that I had the right social values. [laughter] So I knew Dave Berman would see me when I came out.

Eventually, at the end of the quarter—they were on the quarter system at the University of Minnesota—I got on a bus. People ask me

why I stopped in Las Vegas or how I got here. I like to joke and say, "Well, this is where the mattress fell off the top of the car." But the truth is I came out on the bus! [laughter] I got off at the old bus depot downtown, which was where the Union Plaza now is, went kitty-cornered across the street to what was then the Overland Hotel, and eventually went out to the Flamingo to see Dave Berman. And I will always remember Dave Berman. His picture is in this book—several pictures of him. This is Dave Berman. And he was obviously a tough guy, as you can kind of see from his picture. [laughter]

*OK. Like George Raft.*

Yes. Yes. [laughter] He was. But when I went out and went up to the guy that was sitting in the little highchair looking over the pit, I said I wanted to see Davey Berman. He said, "Well, who are you?"

And I said, "Well, I'm Al Gunderson from Minneapolis."

He looked at me kind of dubiously, and I think he picked up a phone that was there by the highchair he was sitting on and got Mr. Berman on the phone and said, "Al Gunderson from Minneapolis is here." And he came right out and greeted me warmly. We discussed the fact that I was interested in learning to deal. He told me that he couldn't put me on dealing unless I learned to deal, and the best place to do that was downtown, that that's where the new dealers typically broke in, and to come back and see him when I was a dealer.

So I thanked him and went downtown, and I got a job. First, I walked up to an old gambler that was known as "Farmer Page." That may not have been my first job. I think I worked a couple of shifts as a shill at the Boulder Club. A shill is someone that works

on the games and fills up the tables so that people won't be afraid to come up to them. They're occupied; the tables are occupied, so they feel comfortable coming up.

After the Boulder Club, I went up the street to the Pioneer Club. And old Farmer Page, who was a former gambling ship operator from the California area, southern California, always used to stand out in front of the Pioneer Club with his hands hooked around his galluses. His thumbs would be hooked in his galluses or his suspenders, as I guess they call them now. He would stand out there in front of the club, and if they needed him inside, they'd come and get him. But he would just stand out there most of the night just looking at the traffic.

So I went up and introduced myself and told him I wanted to go to work and learn to deal. He put me on as a shill there. My first job at the Boulder Club, I earned six dollars a day, a shift. Farmer Page put me on for *seven* dollars a day. I worked there for a while, which was kind of an interesting place to work. Some of Mickey Cohen's boys used to come in there. One was a guy called "Blue-Check Harry." They don't call them *chips* in the gambling halls; they call them *checks*. Blue-Check Harry always used to gamble with primarily blue checks, which are hundred-dollar checks.

Then I went up to the Monte Carlo Club, which was a little further down the street, right next to the Westerner Club. Harry Claiborne used to have his office above the Westerner Club and used to come in to the Monte Carlo Club to gamble. So that was my first knowledge of Harry Claiborne. He had his gold-leaf sign: "Harry Claiborne, Lawyer," I think it said, on the window above the Westerner Club. But I went to work at the Monte Carlo Club, and that's where I learned to deal. I became a craps dealer and worked there for about six or seven months until

December of 1952, I believe, working with some of the people that later became very well-known names in the industry here in Las Vegas.

One was Jimmy Newman, who later became Barron Hilton's casino brains and was essentially the overseer of all of the Hilton casinos here and in northern Nevada. Jim remains a friend of mine. I was on the same crap table dealing with a fellow by name of Jerry Seible, and Jerry became a shift boss in a number of hotels around here.

So I did that until I decided that I really did not like the atmosphere of the casinos. I had been thinking more and more about returning to school, so I went back; and I went back to Omaha with the purpose of going to medical school there.

*This is what, 1953?*

Would have been 1952, in that area. Because I knew that my academic record wasn't too good, and I was going to have to beef it up by getting some better grades and be ready to take the entrance exam, or whatever they called the exam. It was a national exam or an exam that was administered throughout the country. I went back, and I started trying to work my way through school. I initially worked at the Swanson food company, the big food processor there in Omaha, for whom my uncle did consulting work. He helped get me the job there, which was really not much of a favor, because it was about as lousy as a job as he could have ever gotten me! But I went to work there, and my job was dumping cream cans in the dairy there—in the creamery. This wasn't a dairy in the sense that they had cows. The cans would come in on trucks, and then my part of the work was to dump the cans into receptacles where the

machinery would then do the job of turning it into butter, including the mice that were in the cans.

*[laughter]*

And I don't know what percentage of Swanson Ever-Fresh Butter was mice, but we didn't try to sort them out or deprive *[laughter]* the public of the protein they would be beneficiary of. I would dump an incredible number of cans. I had a record that I set there that probably stands to this day on the number of cream cans dumped.

So I worked there and eventually went to work for another company that was occupying the same building, making industrial-grade albumin out of the albumin that they could salvage from egg shells, and also working in the same complex of buildings, where they made pot pies. As I say, my uncle was a bacteriological consultant for Swanson's, and I worked in various capacities there in the Swanson complex. It's now a subdivision of Bird's Eye, you probably know.

During that period of time, while I was sustaining myself in that fashion, I was going out to the University of Omaha, which is where I met my first wife. She was employed as a sort of an intern in the psychological testing clinic, and all of the incoming students had to be subjected to batteries of tests. She was one of those students that administered the test to me, and when the tests were being graded, apparently—this probably will sound immodest—but one of the other gals said, "My God, here's someone that's got all A's." I was in the top percentile of all of the tests, so my first wife decided that I was someone that she wanted to meet. She made herself pretty much part of the scene wherever I might be in the school. So we started going together, and ultimately, as such things go, we got married.

*What year would that have been, and what is her name?*

Her name was Maria Caterina. She was the little Italian gal. She had two brothers; one was Dominico Nick, and the other was Sebastiano, who was nicknamed "Subby." Dominico is on the Nebraska Supreme Court. We got married August 20 of . . . I think it was 1955.

And when I got through law school, I really wanted to be an academic then. I was particularly interested in trade regulations, antitrust law. I had a wonderful teacher named Dick Kelly, who ended his career as a professor at the University of San Diego. I've always thought that the wonderful gift that a professor can provide to his students is to make academic endeavor a little more tolerable and a little more fun, a little more meaningful than it would otherwise be without him. Dick Kelly was that kind of guy, and he taught antitrust. So he inculcated in me a real interest in antitrust. I decided that as a preliminary to a career in antitrust, I would apply to the Federal Trade Commission for a job.

I had been selected to compete in the national moot court competition that year. The problem involved Section Seven of the Clayton Act, which is an antitrust law, and I had gone to St. Louis to participate. The Federal Trade Commission wrote to some or all of us that had been in the competition, soliciting our applications because they wanted people that had some background in regard to Section Seven of the Clayton Act, which was what they called the anti-merger bill. So I applied and eventually was invited to come to Chicago for an interview. I went there and interviewed and got an offer.

Meanwhile, I was taking history courses at the University of Omaha, graduate history



courses just because I was interested in history. So I took the job in Chicago. My wife and I moved there. She wasn't at all happy about the idea that I wanted to prepare myself to be an academic. She had the vision that what a lawyer does is get out and compete. That was her word. She thought that lawyers who got out in practice were *competing*.

So we went to Chicago, and I continued to fritter my time away. I checked myself into the Lawyers' Institute in Chicago and began taking courses there. They had a specialty available in antitrust, so I took a few courses in that there. I then became interested, while there, in the possibility of studying antitrust from an international perspective. I don't know if you've ever heard the name Max Rheinstein?

No.

He was a very famous German scholar who left Germany ahead of the Holocaust and wound up at the University of Chicago. I applied for their foreign antitrust program, which was really kind of a wonderful program from my standpoint.

Anyway, I talked to Professor Rheinstein, and I remember that one of the people working with him at the time was a fellow whose name you'll recall was a part of either the Kennedy or Johnson administration as attorney general, a fellow by name of Katzenbach.

*Yes. Nicholas Katzenbach.*

Nicholas Katzenbach was there at the University of Chicago at the time and working with Professor Rheinstein. So I met them both at the time. And Rheinstein was receptive to accepting me, but I believe the problem at that moment was the fact that they alternated

years. One year they would teach it in French, and the next year in German. I had only studied German; I was not at all qualified in French. So I kind of put it out of my mind and decided to come out here to Las Vegas and try my hand at the practice of law.

*Now, had you completed an undergraduate degree by this time? You had a B.A. degree?*

No. I went into law school on the basis of test scores and on the basis of some accumulation of credits. [laughter] I scraped together enough to convince Father Gregg, who was the regent of the law school and who incidentally looked to me a lot like Davey Berman had. He had eyes that would just drill you. [laughter] I'll tell you a funny story about Father Gregg in a minute. But anyway, I managed to convince Father Gregg that I deserved a chance to go to law school, and they admitted me.

[laughter] Father Gregg taught torts. And there are always brown-noses around any school, as you know. There's always some kid trying to cozy up to the professor. We had a guy in our class by the name of Patterson, a real brown-noser. And, of course, in law schools they used the Socratic method—asking questions and getting the answer. Father Gregg was wonderful at the Socratic method, and he was a real fool killer.

So one day he was exploring a case that involved two police dogs, two German shepherds, that had died. They had somehow or another suffered some catastrophe, and Father Gregg called on Patterson to recite about that case. Patterson gave his version of the case, and as he got to the end, as he was summing up the facts, he said, "And the dogs passed on."

And Father Gregg, who used to like to put his fingers up in little "tepees" like this,

he looked over his fingers at Patterson and said, "Ah," he said, "Mr. Patterson. And to where did the dogs pass on?" [laughter] Well, of course, the Jesuits would not concede to you that a dog had any soul. Dogs are made up of "monads" intellectually, according to Thomastic philosophy, which is central to Jesuit philosophy. They are simply mechanical beings and simply react. They don't think. [laughter] So Father Gregg said to Mr. Patterson, "And to where did the dogs pass on?" Well, this just devastated poor, old Patterson, and the class broke up.

But anyway, that's a long way to explaining who Father Gregg was, but Father Gregg decided to give me a break and let me into law school.

*And this is at Creighton?*

At Creighton, yes. So I still wasn't real sure I wanted to go to law school. But the problem was, the first semester, lo and behold, I was top in my class. And that really put me in a quandary, because I had a chance to have something, to achieve something of consequence, and I wasn't sure it was what I wanted. So I went and told Father Gregg my problem and the fact that I really thought I might want to go to medical school. And the old Jesuit, the tough-minded old "Jebby," as we called him—they called them "Jebbies"—put his fingers up in a little tepee, and he looked at me, and he said, "Well, Mr. Gunderson, if you want to go to medical school, I suggest you go to medical school."

Well, of course, the big thing was I didn't have any money to go to medical school. And I was not yet married, so I couldn't do like most doctors do, and that is find a nurse to support them through medical school until they find somebody down the line and dump their nurse wife, you know, the way the

pattern goes, the way all of us who the legal profession know, doctors commonly act. So it really wasn't all that easy, and Father Gregg, of course, knew it wasn't all that easy. But I thought it was wonderful, the way he made me face the indecision between what I really didn't want to do and maybe what I didn't want to do even less. I got out of his office, and I thought, "Yes. Well, I do have to make a choice. [laughter] And, boy, it ain't going to make a difference!" So I went ahead and decided that I would go ahead and first get my law degree—and then decide what I was going to do next. I was at least going to lock up that achievement.

So I remained in law school, and I worked. At the end of my first year, it was common for a certain law firm downtown, which was kind of the most prominent law firm, to offer a couple of the top students positions at the firm as summer interns, or, as we used to call them, law clerks. Kennedy-Holland-DeLasey and Svoboda, which was then foremost law firm in Omaha, sent an invitation to come down and interview, which I did. I was interviewed by a guy by the name of Ralph Svoboda. He asked my name, and I told him Elmer, which is not a name I've always liked. I said, "Well, it's Elmer, but folks call me 'Al.'"

And Ralph Swavoda always would introduce me to people as saying, "Well, this is Elmer, but he let's me call him Al."

*[laughter]*

The head of the firm was a guy by name of J. A. C. Kennedy, who was a wonderfully bigoted old Irishman, and he was a Grace Kelly fan. The firm ran Missouri Pacific Railroad out of receivership, and they had the major business clients in Omaha. J. A. C. Kennedy used to walk to work, and in the wintertime that was quite a walk from where



he lived, several miles and in cold weather. It was a hell of a walk. But he would walk it every morning. He came in one morning, and I was sitting at his secretary's desk, using her desk, typing on her desk. I could see he was very happy to see that I was there working. I believe it was a Sunday morning, and the old guy, well into his nineties by then—he died at over a hundred—he looked at me, and he said, “This firm was built by men who worked Sundays!” [laughter] So he and I kind of got to be friends in a very grudging way, because he wasn't a guy that was really effusive. One of the other law clerks, he caught him . . . . He went out to the men's room, past the law library where Leo O'Brian was looking out the window; and he came back, passed by the same small law library, and Leo O'Brien was still looking out the window. He walked up to Dorothy Mintern's desk, his secretary, and he said, [gruffly] “Dorothy, who is that young man out there in the back law library?”

She said, “Well, that would be Leo O'Brian, Mr. Kennedy.”

And the old man said, “Well, fire him! All he does is stand around, look out the window.”

And Dorothy said, “Well, his mother just died, Mr. Kennedy.” [laughter]

That almost stopped Mr. Kennedy. But principle has to be respected, and he said, “Well . . . fire him!” [laughter] So he was a tough, old bird!

They used to sing a song about him at bar meetings, about him and about a guy that left the firm that made him very angry because he was one of his best trial lawyers, a fellow by the name of Leo Eisenstadt. The song they used to sing, to the tune of “America”—[sings] “J. A. C. Kennedy, our man of destiny, unto thee we sing. Piss on Leo Eisenstadt; he left the old firm flat. Now, what the hell do you think of that? Our J. A. C.”

Anyway, the old man's greatest pleasure in life was going to Grace Kelly movies. He loved Grace Kelly, and whenever there was a Grace Kelly movie on, he would find it and go to see it. And to him it was an absolute tragedy—he couldn't believe it—when she married Prince Rainier. When the ceremony was performed, he was shaking his head sadly, and I heard him say, “Why would she marry that wop?” [laughter] Because he couldn't believe it! But that was J. A. C.

I was awfully pleased years later, when I was practicing out here in Las Vegas, that he called on me to help him with a problem. [laughter] And by that time he was over a hundred, so maybe he was senile. [laughter] I guess that's the only explanation.

Anyway, that was where I worked while I was going to school. When I graduated, they did offer me the opportunity to stay on with the firm, and, of course, that was considered something of a plum, but I didn't choose to do that. I went to Chicago instead.

*With the Federal Trade Commission?*

Yes. Yes.

*And it says you did some postgraduate studies at the Lawyers' Institute in Chicago. Could you talk about that?*

Yes. Well, the Lawyers' Institute is the graduate division of John Marshall Law School. John Marshall is an ABA-approved school; I think it's also AALS-approved school. They had a graduate division there where they taught courses that were of particular consequence to lawyers there in Chicago. Patent law was one of the specialties; antitrust law. They were involved in teaching, I think, procedure. It was all pretty much practical stuff. My best friend in the student

body there was a guy who later became a prominent patent lawyer there in Chicago.

So that's part of how I occupied my time there. The other part I occupied by going up and being a member and an officer of the Chicago Chess and Checker Club. And at one time I thought it would be a lot of fun to try to show the parallels between certain cross-examination techniques and certain attacking motifs in chess, because chess really is a game that does have parallels to warfare and to legal practice—the tactics, the strategy. But I've always thought it was very beneficial to me to learn chess as deeply as I feel that I did at one time, understand that it has a great residual benefit in other areas of life. Learning to track out the various permutations, each move by move, is something that you learn—choosing between options. I think that's a thing that is very worthwhile for young people to study.

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## PRACTICING LAW IN NEVADA

*So you were in Chicago in 1958, and then at some point a year or so later, you made your move to practicing here in Nevada?*

Well, let me see. I graduated from law school in June of 1956. I came to Chicago. I spent about thirteen months there playing chess and going to the Lawyers' Institute and other vain endeavors. And then I came back to Nevada in, I guess, the fall of 1957.

I worked for a year, approximately, for a law firm by the name of McNamee and McNamee, who were good people. They were a pioneer family. Leo McNamee was a very sweet-natured, old Irish gentleman who went to church, I should say, every day, and he practiced with his son John. One of the stories that I like to tell about Leo McNamee was he never handled a divorce case. Ava Gardner was sent here to try to get a divorce. Someone down in California knew of Leo, knew him, I guess, and liked him and respected him and referred Ava Gardner to him. But the lawyer down in California didn't tell Ava anything about the fact that Leo didn't handle divorces.

So Ava showed and made an appointment and came up to see Leo and said she wanted to get a divorce. Well, he immediately said, "I don't handle divorces."

And Ava said, "I'm married to Mickey Rooney." That lit Leo up, and she thought she had him.

And Leo said, "Did he go to school with one of my boys?" [laughter] That it sounded like an Irish name, that one of his boys must have gone to school with! [laughter]

[laughter] *That's funny.*

But he was a wonderfully sweet, old man, and his primary pleasures in life were drinking a little whiskey and playing a little penny poker with his wife. So that was a good year. And my wife, who was with me, got a job at the Nellis Air Force Base running their education program. So she worked out at Nellis Air Force Base, and I worked for the McNamees. They had offices down on Fremont Street above the El Portal theater building, and I had a little cubbyhole that they

assigned me right next to the projection booth of the theater. So I could hear the movies being played as I did my legal research and became good friends with the projectionist—plural, I guess I should say, because there were more than one over the course of the time I was there.

I worked for Leo and John until I took the bar. They offered me a job. If I'd been smarter than I was, I would've taken the job, because I took a different job with a lawyer that was a guy I didn't ultimately care much for. I thought it was going to be a better opportunity, because John McNamee had a younger brother that was going to come back and practice with him, who I ultimately decided was a great guy. But I figured that he would get all the opportunities with the firm, so I decided that wasn't what I should be doing. I accepted an offer with an attorney who had been on the other side of a case that I had worked on for the McNamees. In retrospect, I think that was probably a mistake, because I didn't enjoy it with him, turned out not to like him very well. And I only worked for him as an associate for about five months.

*What was the younger McNamee boy's name?*

Joe McNamee. Joe has a horse ranch of sorts out here called the Silk Purse Ranch, I believe he calls it. And the other person—there was a brother-in-law that was practicing with Leo and John by the name of Pete Rittenhouse. Actually, his name was Franklin Pierce Ross Rittenhouse, and he was one of the Philadelphia Rittenhouses and one of the most decent, honorable guys I know. Ultimately, I became very, very fond of him, but unfortunately I didn't spend as much time with him as I would have if I had stayed with the firm. It would have been 1958, and I started practicing in late 1958.

*And it says here you took the Nevada bar and you were a member of the Nevada Bar Association, the American Bar Association, the Association of Trial Lawyers of America, the American Judicature Society, and numerous bar committees apparently during that time.*

Yes.

*So I assume this was when you sort of kicked off your career as an attorney locally.*

Well, yes. We can start from there. As I say, I was not too well satisfied with the association that I accepted upon leaving the employ of McNamee and McNamee. Eventually, after a few months, I decided to open my own office, and, of course, everyone told me I would starve. I was particularly viewed with horror by legal secretaries who knew more about the practice of law than I did, who were absolutely confident I was going to starve, and they were pretty much correct. But I opened a little office on Third Street in what was called the Bigelow Building. I guess now the Four Queens Hotel has moved onto that site. So I took anything that I could get my hands on in the way of cases. And particularly if you're starting out the way I did, there's not very many lucrative cases come your way.

*And I guess you couldn't advertise in those days.*

Oh, no. You couldn't advertise. In fact, they had limitations on how large your signs could be.

It was a serious problem not having any income. So I did that for some period of time, and I think of all the things I did wrong, but one of the things I think I did right, I had the attitude very firmly that whenever I got a case and I had something to do that I didn't know how to do, that I would go research it and seek

advice on it if I could, so that I would never again be ignorant about that particular thing again. And I think that one of the terrible things that happens with young lawyers is that they don't enter the practice of law with that attitude. But if you slough through something the first time, you got to slough through it the second time. That's a terrible thing for a lawyer. I guess it's a terrible thing for any professional man—a doctor, if he tried to get by that way, would have the same problem. But you got to be willing to invest in yourself to the extent of learning to do each task you're confronted with in the best way you can, so that the next time you confront it, you can handle it. And that's the only way you're going to get proficient.

I eventually joined the Jaycees, which was a happy thing for me in many respects, because many of my friends ultimately came from that group, and they were the core of the body of people that supported me when I ran for the supreme court.

Actually, the year that I joined the Jaycees, they had a ploy to get new members. The system then, at that particular moment in history . . . the membership chairman had conceived the idea that each member, when it came his turn to get a member, would have bestowed upon him a pregnant goat. And he could only pass that pregnant goat on to somebody else and get rid of it—rather than having it give birth to its kids—he only got to do that when he had found a new member. So one day an attorney that I knew from the days when I was with the McNamees showed up in my office and began being extremely friendly to me and showing great interest in my well-being and wanted to take me out to lunch, and he did. He told me that he thought I would make a wonderful new member of the Las Vegas Junior Chamber of Commerce and that he wanted to sponsor me. He had his

membership card with him, and by the time we got through lunch, he had me convinced that he really thought I was just a wonderful guy. We went back up to my office, and I filled out the application and wrote him a check. And, lo and behold, I was a member of the Jaycees. So he got to take the goat and pass it on to the next member that was going to have to go through the same process—find a member. Now, I didn't know what was motivating him. But this was a tremendous inducement to go out and find a new member before the goat gave birth, because the goat became very endeared to the custodian's children in the ordinary case, and everyone was fearful that the goat might give birth, and then they would be stuck with a litter of goats that they would have to keep until maturity. So this individual really put the full-court press on me to join the Jaycees.

Ultimately, I found that this was a group of guys that I enjoyed. It was a group who were all interested in helping each other, and the Jaycees is where I began getting some business, the first good business, that I got out of anywhere.

*What kind of money could you expect to make in those days practicing law in this town?*

Well, those that were here at the right time, when the divorce boom was going on, were able to do pretty well without working very hard. Those of us that came here after the divorce-boom days had to work pretty hard to survive if they didn't have a family practice to fall into.

*I see.*

You know, if their father had a safe full of wills that needed to be probated, remember in those days, the practice was that they would

get their fees out of estates on a percentage basis, and that was pretty nice. *Now* there's a court-imposed fee schedule. Lawyers are not able to rip and tear, as they once were, in estate matters. So there is more focus through the courts on forcing lawyers to be fair with their clients.

*So you had your own office? Where would your office have been?*

Well, initially, I opened an office, I believe, at 120 South Third Street, which is just a little bit south of Fremont Street. Then after a couple of years, I had been working a case against Sam Lionel, who was an established lawyer. And Sam became interested in me and asked me if I would consider coming in with him. I joined him first as an associate, and then after I was with him for a while, we practiced together for several years and formed a partnership that became Lionel and Gunderson, which actually was the precursor of the firm that ultimately became Lionel, Sawyer & Collins. Sam's firm is now the largest law firm in Nevada and has, of course, a big office, not only in Las Vegas, but in Reno.

Sam was an important man in my life, because he was an outstanding lawyer and a good mentor. [laughter] And perhaps more importantly, he had some clients that could pay for our services! So we handled some fairly substantial litigation together, with me primarily doing the legal research and writing and Sam doing a substantial part of the trial work. And I won't belabor at this point the various cases that we handled, but I do recall a couple of things.

One thing, we handled the litigation over the proceeds of the Liston-Patterson fight. One of the participants was a party by the name of Graf Reiner Smith Enterprises. We won that, on Sam's behalf, since he

represented the owners of Market Town, which was a large supermarket. I handled the litigation regarding breaking the lease and repossessing Market Town on behalf of our clients. We were involved in concerns relating to the property out here to the north, I guess it is, the northwest of town, that has now become the Summa properties that was owned by Howard Hughes. He'd bought it years before and had a large tract out there. And we represented him in the controversy over that. So I learned, I feel, a lot from Sam and while with him. And I think he's as fine a lawyer as anyone I ever knew.

*What would a typical working day have been like then? Did you have real long hours, or how did your life go, professionally speaking?*

Well, I worked pretty hard. I frequently would work round the clock. I've suffered, as I say, from being a perfectionist and from wanting to do whatever I do right. Sam and I handled such things as . . . well, Sam was the business guy; he was the rainmaker. And my participation in firm profits was defined by a formula that gave me less return than he received.

Actually, in those days, Sam represented Doc Stacher, who is a well-known figure in the history of the so-called underworld. We represented the group that was clustered around Moe Dalitz. [laughter] I have a real affection for Irwin Molasky, who was one of our clients, or, more accurately spoken, one of Sam's clients. Sam wasn't around one day, and I had been doing some work for Irwin, who was a little guy that was affiliated with Moe Dalitz. But one day Irwin came in, and he had a guy with him in tow, and they wanted an agreement done. The girls were out—I suppose I should say the secretaries—were all out for the noon hour. So I sat down at



the typewriter to get a little memorandum typed up, just hurriedly type it up myself, so that they would have something to confirm the agreement. And I've always loved Irwin Molasky, because this guy that he had with him was a nasty, belligerent character. He was ragging on me while I'm trying to get this agreement done. And finally Irwin looked to him, and he said, "Why don't you shut the blank up! This kid is competent!" [laughter] I wanted to kiss Irwin! From then on, I would have done anything for Irwin.

Sam and I did quite well together, but ultimately, I decided that I wanted to go on my own. You know, there's an interesting book called *Seasons of a Man's Life*. Have you read it?

*Yes, I have.*

Written by a guy by the name of Levinson and his team of social scientists. He has an analysis that suggests one of these seasons of a man's life is when he wants to become his own man. It was a longitudinal study of men. I think they've since done a longitudinal study of women. I know they were going to do that. [laughter] But I suppose the parallel chapter must be "Becoming One's Own Woman." Is it? Do you know?

*Some people have done writing along that line. I don't know if it was the same man or not, but yes.*

So there's a period he calls "becoming one's own man," a time at which you start feeling you have to become your own man. I think one day I decided that that's what I felt I had to do. And although I have still very fond memories of Sam Lionel and our time together and what he actually did to tutor me, mentor me, the time came when I wanted to

become my own man. So I told him that I was going to leave and open my own office. He tried to get me to tell him why, and I didn't have a good answer. [laughter] You don't suppose there's any answer to that question when that point in life comes.

So I went out and . . . well, I went back to the McNamees. By that time Leo was dead, and John was practicing with his brother-in-law, who was a wonderful guy by the name of Pete Rittenhouse, actually a descendent of the Rittenhouse clan that is famous in Philadelphia. They had a shared ownership of a law building down on Third Street and had a small office which I rented from them with the right to use their law library and practiced there with them for a while. Eventually, I bought my own building on Las Vegas Boulevard South with two other lawyers, and the federal courthouse is now on that site.

*About what year would this have been? Late 1950s?*

Well, let's see. When I went with Sam, it was about 1960 or 1961. When I left Sam, that was someplace around 1963 or 1964 or maybe a little earlier. And when we bought the building on Las Vegas Boulevard South, that would have been mid-1960s. I continued to practice in that building on my own until I ran for the supreme court in 1970.

*Were you still sort of a general practitioner, or had you specialized at this point?*

Well, it wasn't a matter of specialization. Practices that have an emphasis, I don't believe are commonly the result of a decision to specialize; at least that wasn't the case with me.

One of the important events of my life was meeting a man that was then the vice

president of Lembke Construction Company, who became a good friend of mine. He was actually responsible for me getting the first really good business that I had as a private, solo practitioner. Doing business with people like Lembke Construction Company—good business—was *not* something that one generated every day. So Al was an important turning point in my life. And I handled pretty significant things for them, thanks to the fact that Al became my friend and believed in me.

His name was Al Lermusiaux. He was a Mexican born in old-town New Mexico who had a French name. And, of course, as you know, there was a period of time when the French emphasis in Mexico was quite heavy, and someone of Al's forebears must have been in that category.

One of the first cases I handled with him involved a situation . . . you may remember Tom Hanley, the name? Tom Hanley was a guy who ultimately did time for murder. He killed about seven or eight people around here, I figure. He was the head of the Sheet Metal Workers Union, but was forced out of that because there was an ugly belief that prevailed that Tom and some of his cohorts had been responsible for the demise of one of the business agents. Some would say he was a labor racketeer, and he did a terrible thing by union standards. It is strongly believed by many people that he had a fellow by name of Jim Hartley killed without getting clearance from the international union. And that's not a good thing at all, as you understand.

Incidentally, Jim Hartley was Jim Brennan's brother-in-law. Anyway, Tom was left without a union and became a guru to a plumbing contractor by the name of Ritter. Lembke had a bunch of contracts with J. M. Ritter Plumbing and Heating, and the jobs became problematic, and ultimately Ritter had to declare bankruptcy, or perhaps I should say he

went into, I believe, Chapter 11 proceedings. And so those proceedings brought me in contact with J. M. Ritter and Tom Hanley, who was more or less running the company for him at that time. Tom, incidentally, never reformed the ways that made him anathema to the international union, and eventually, if you've been around here awhile, you might remember that Tom was the individual who the government ultimately claimed had killed Al Bramlet, the head of the culinary union. It was quite a famous case. He and his son went to prison for that.

But anyway, he was out and around at the time, and we had substantial hearings in the old federal courthouse over Ritter's bankruptcy. And I remember an amusing incident. [laughter] When I was sitting with Al Lermusiaux, examining Tom Hanley, who was a very shrewd, cunning kind of guy that knew how to baffle an attorney. And I was trying to cross-examine Tom, and I wasn't getting anywhere. He was baffling me at every turn, and Al Lermusiaux leaned over to me and said, "You're beating a dead horse! Ask for a recess!" So I did, and we got our recess, and we went out in the hall. Al explained to me what he thought I was doing wrong. [laughter] My client elaborated to me what he thought I was doing wrong, and he was such a smart guy, that the truth was, he was absolutely right in that I *was* beating a dead horse! [laughter] And he was right as to how I should go about it.

But, fortunately for me, he overlooked the fact that I had been pretty inept and gotten carried away and was beating a dead horse. He remained a client for the period that I practiced, and it was his son that created that plaque for me up there. But we ultimately got all of that settled, and Al and I lived together through a number of pieces of litigation and controversy and were friends until he died a couple of years ago.



I remember when we were negotiating out the settlement of all of the contracts that brought them into bankruptcy court, Al had his own chance to deal with Tom Hanley. And as we negotiated those contracts, Al baffled Tom Hanley at every turn. And the point came when Tom Hanley stood up and threw his pencil to the floor. He said, "Damn you, Al Lermusiaux! I know what you were when you were a little boy! You were the little bastard that went into the drugstore, asking the druggist to change your quarters into nickels and your nickels into pennies and the pennies back to quarters, waiting for the druggist to make a mistake!" [laughter] So I got into the construction work through Al and handled quite a bit of construction litigation and negotiations with Al.

But Al was the kind of guy who didn't dress well. His idea of buying a new set of clothes was to go down to Sears Roebuck and buy the cheapest reused wool jacket that he could find down there. But he could walk into a room and dominate all of the businessmen that were there—the casino executives, because Lembke Construction Company built many of the important hotels around town. When Al took over, he was able to pretty much control any group of people with his logic and the power of his presentation. He was just a remarkable intellect.

And one of the things I remember most about him, since he was Mexican, he had no resentment and no animus toward people that did have prejudice. But Al just had an attitude that they weren't worth even thinking about. His attitude was, they were dumb and ill informed, and he wasn't going to let that bother him. He was totally secure in himself, and we were together in so many negotiations, and I learned so much from him. During the period I was with him, we built the Fremont Hotel, the high-rise, for the guys that came

out here from Frankfort and Lexington, Kentucky. After they got in trouble back there over trying to frame the district attorney, they came out here. There's an interesting book on that, written by Hank Messick. But we worked together on the problems that developed during the construction of that hotel, including the fact that one of the subcontractors overloaded the Linden crane on the top of the hotel and caused it to crash into the street below.

Lembke built the so-called Diamond at the Dunes, which was the old, diamond-shape high-rise that has now been imploded. The architect there was a guy by the name of Schwartz, whom everyone referred to disdainfully as "Frank Lloyd Schwartz." One day Frank Lloyd Schwartz, as we called him, decided that he was going to make problems on the job. He was from Chicago, and the job was being funded by the Teamsters' health and welfare fund, as many of the hotels were in those days. And as a condition of giving the owners of the Dunes the money to build the so-called Diamond of the Dunes, it was specified that they had to use Frank Lloyd Schwartz as their architect. So he was on the job. And apparently, on jobs that Schwartz was forced upon owners as the architect, he felt it was one of his prerogatives to cause trouble on the job and then demand a fee to solve the problem. The job had proceeded without problems until we got up to, I think it was like the eleventh or twelfth floor—let's say it was the eleventh floor—and all of a sudden, Frank Lloyd Schwartz decided he was going to take the position that the floor we were working on was not being created properly, because we were not getting the aggregate for the concrete from the right pit, the designated pit. So he red-tagged the job and stopped the job and eventually caused quite a crisis by demanding that we pull the

entire *floor* out and replace it, which caused a lengthy series of meetings at which all of the great experts [laughter] in concrete were assembled to discuss the matter.

We had extensive meetings out at the Dunes that went on and on. And all of the casino bosses participated, as well as all of these great experts that we brought in that were knowledgeable on the subject of concrete. Eventually, it was determined that although we had used aggregate from a pit that was not specified, that in fact the floor that was being questioned by Frank Lloyd Schwartz was the strongest floor in the building—which kind of pulled the rug out from under Frank Lloyd Schwartz and caused Jake Gottlieb, who was the primary owner of the building, to lose faith in him. In fact, I think there was a time when Jake Gottlieb was ready to do something ugly to Mr. Schwartz, because he was holding up the job in order to conduct what everyone was fairly confident was a petty shakedown.

So as Frank Lloyd Schwartz's credibility dwindled, the issue became how we could find a face-saving device for him, because he had demanded that the floor be torn out, saying that that was the only thing that would satisfy him. And now it had turned out that the floor was the strongest floor in the building. So the idea was conceived, and I don't know who conceived it; I think it may have been Jake Gottlieb, as a conciliatory gesture to Frank Lloyd Schwartz, because they had to keep him on the job. The Teamsters' pension fund had insisted that he be the architect on the job. So I guess the alternative, so far as the owners of the Dunes, was that they had to either keep him or kill him. So to try to solve the problem, the idea was decided upon that we should prop up the floor, which, of course, was very difficult to do, first of all, because all the floors beneath it had already been framed

in—they had their drywall, and they were being decorated. And if you were going to put pipe columns to supposedly hold up the floor, you were going to have to rip the drywall out, and that was a solution that none of the owners, including Jake Gottlieb, was willing to countenance. So eventually, it was agreed that instead of placing the supporting pipe columns underneath the floor that was being questioned, that we would be required to put the pipe columns on *top* of the floor, which, of course, simply added to the weight. And that was pointed out to Mr. Gottlieb, but his attitude was that he didn't give a damn about that; he just wanted the problem settled. So it was agreed that we would pay to have that designed by Frank Lloyd Schwartz—the pipe columns that went on *top* of the questioned floor. And they were then installed, which, of course, added to the weight of the floor and, if the floor had been weak, perhaps would have caused it to collapse! [laughter] But since we knew it was strong, that was not [laughter] anything but a theoretical problem.

So the pipe columns were installed, and the job went forward, and the payment was made to Mr. Schwartz—not by the owner, but by the contractor, which, of course, is bizarre, because the architect is not the employee or a contracting party with the builder. But that's how that was settled. [laughter]

So I had the opportunity to have a window into the minds of some of the Strip hotel owners. Two things happened during the course of being out there for such a long period of time while we got this problem settled. One was that there was a debate over whether they would put dividers on the balconies so that people who came out could not see into the next balcony. And it was about the time that the Civil Rights Act was under consideration back in Washington, and that became a subject of discussion. And

ultimately, one of the owners said, “Well, you know, the Civil Rights Act is going to pass, and we are going to be admitting blacks to the hotel.” Which I thought was interesting because people commonly say you can’t legislate morality. But those gamblers, those guys *accepted* as a given that they were going to comply with the law—whatever it might be. They were going to bow to the law, and if the Civil Rights Act passed, they were going to accept the proposition that they had to admit blacks and change their policy.

And I always think of that when anybody says you can’t legislate morality. Because here are guys that were as tough and sardonic about law and morality probably as anybody on the face of the earth, but they just accepted the fact that that was something they were going to do, if the law told them they had to. So as an epiphenomenal fact, they also decided that they would put in the balcony dividers hopefully to minimize any complaints, any bias complaints that they might receive from someone that checked into the hotel and was offended or claimed to be offended or voiced offense about there being a black outside their window on the balcony next door. Now, maybe that’s not an admirable solution, but that was what they decided: they were going to comply with the law, and they were going to anticipate alleviating the problems that they might face as best they could. So I always think of that, as I say, whenever anybody says you can’t legislate morality.

The other thing that was a memorable occasion, every time it came time for the owners to make a count of the drop in the casino, which they do on a regular basis, the owners go in and see to it that they watch over the count being made. When the time for the count came—even though we had all this magnificent team of experts from all over the country that were being paid some *very*

substantial amounts to be there—when the time for the count came, all the owners would jump up and march out of the conference room to go do the count.

At one interval that that was happening, we were getting ready to assemble, and they were just talking . . . It was at a time when the savings and loans locally were talking about raising the interest rates that they were going to pay to savers. And Major Riddle, who was an old-time gambler, was waxing philosophically about the raise in interest rates that the savings and loans locally were offering their savers. And he said, “You know, that’s wonderful!” He said, “I think that’s great.” He said, “The little guy ought to get some extra *vigorish*.” Now, I don’t know if the term *vigorish* is a familiar term to you, but the *vigorish* is, if you will, the payoff. He said, “They ought to get some more *vigorish*.”

And a little guy by the name of Kewpie Rich—I guess it’s spelled like Kewpie doll—he was just a little, tiny guy. He said, “Damn you, Major!” He said, “Don’t you understand that if they’re paying these little guys, that you call them, more, they’re going to have to charge us more?”

And there was a guy there by the name of Sid Wyman, who was very proud of the fact that he had never had a job outside of gambling in his life. He had started out, apparently, back swabbing floors in Chicago at one of Al Capone’s saloons, and he was quite proud of the fact that he had never worked for a paycheck, that he had always worked in gambling. And Sid looked at Kewpie Rich, and he said in response to Kewpie’s statement that the banks would be charging them more money. Sid said, “Screw them! Let’s use our own!” [laughter]

Now that brings into focus the fact that in those days, all of the owners of the successful hotels had their own cache of money in the

cage that they were storing there. And they probably were able, if they pooled their resources, would have been able to build a hotel with their own money! [laughter] But that's what Sid said. Later he did have some IRS problems where he was represented in court by Harry Claiborne, and a fellow by the name of McManis—that's a well-known tax lawyer. But that was his solution to the problem: "Let's use our own."

*I'm not quite sure how to ask this question, but here you were—a traditionally trained attorney with the values that come with that kind of training—plopped down into a situation where there were a group of people, at least, who probably had some alternative views of right and proper behavior. I wonder what kinds of tensions or challenges that presented for you as a practicing attorney in those days?*

[laughter] I guess I can say Jake Gottlieb, when we were getting shaken down by Frank Lloyd Schwartz, based on what he said, he was an interesting guy when . . . he was very inarticulate. And typically, Jake would start a sentence, and then he would interject a new sentence somewhere in the middle of that one, and then there was another sentence interjected into that one. And it was kind of a stream-of-consciousness sort of thing. But if you listened, he made sense! [laughter] You know, you *could* get the gist of what he was talking about.

And one day, when we were discussing Frank Lloyd Schwartz, I got the distinct impression that Jake was leaning in the direction of the conclusion that Frank Lloyd Schwartz should be planted out on the desert somewhere. And the people in the room with me at the time were Al Lermusiaux and one of the other high-ranking people in Lembke Construction Company, a fellow by the name

of Dick Chase, who was a very, very strong church man and a moral kind of guy. When we got out of there, Dick expressed concern, that it sounded as though we might have heard something that we shouldn't have heard regarding what was going to happen to Frank Lloyd Schwartz if he kept this job tied up any longer.

And now [laughter] you raised a question of how I felt. Did I feel conflicted? At that point in time, I had come to despise Frank Lloyd Schwartz so much, [laughter] I wouldn't have commented to anything about what I thought Jake Gottlieb had said. In fact, as I say, you could never repeat a conversation with Jake Gottlieb. You could never have said, "I heard Jake Gottlieb say that we're going to have to get rid of Frank Lloyd Schwartz." You just could not have repeated the words that he had uttered with any fidelity. So at this point in time, I don't really remember . . . I can't really say that he had reached the conclusion that Schwartz was going to have to be dispatched to go see Bugsy Siegel—wherever Bugsy is. But that was my sense of what he was saying at that particular moment. Of course, Frank Lloyd Schwartz lived through the job, and so that never occurred to him.

*There was a case in which you got involved with Ty Hilbrecht—we talked about this off the record awhile back—sometime in 1960s, in which a gentleman was charged under the Lindbergh Act, interstate threat by telephone. I wonder if you could review that for the record. That was an interesting story, I thought.*

Well, the incident you refer to involved a guy by the name of Jack (I forget his last name) from Omaha, actually from a suburb of Omaha. He was a car dealer back there, who was represented by one of my classmates. He was a guy that evidently was not very well

in control of himself, and when he got mad at his wife, he tended to engage in domestic violence. So unfortunately for him, his wife had a father who was pretty well connected back there and who was able to get the authorities to pay attention to domestic violence complaints. So my classmate, who was a very good trial lawyer, decided that the thing to do was to get him out of town until the heat was off, and he sent him out here and asked me to kind of pay attention to him and take care of him. So he showed up, and I did—I took him around and bought him dinner. We went to a place that was then run by an old, Irish politician by the name of Bill McGarry that was at the foot of the Landmark Tower. We spent the rest of the evening there drinking.

Eventually Jack went back to his hotel; I believe he was staying at the Stardust. And apparently, when he got up to the room, he was pretty obsessive about his wife, and he called her up to try to talk to her, and she apparently was not very receptive to whatever it is he wanted to talk to her about. And as such things happen, he became ugly with her and began talking about what he was going to do to her. Now, in most cases of that kind, that's as far as it would have gone, but as I say, she had a father who had some capacity to motivate officials to do things, and he apparently was able to engage the attention of the U.S. attorney back there and I guess the FBI. So they investigated, and they decided to charge Jack under the Lindbergh Act for interstate transportation of a threatening telephone message. And that's how he came to be before the federal court.

Ty Hilbrecht was appointed to represent him. I don't think that he was retained, but he may have been. So in the course of it, of course, the question of what his mind-set was, what his intent was, whether he was

actually threatening her or some alternative interpretation of his words—that became the issue in the trial. So Hilbrecht, in the course of trying to prepare for the trial, talked to me, and the defense evolved that he, I guess . . . I didn't hear Hilbrecht's argument, but I think Hilbrecht basically argued that Jack was drunk out of his mind, and that the words she thought she heard either hadn't been spoken or were spoken without intent. I don't know how he argued the case, but I think that is the substance of his defense.

*And what was your part?*

My role was to describe our binge and how thoroughly intoxicated he was. And also, I think, in the course of it I also articulated whatever I could about how much he loved his wife and how much he cared for her and how he was uttering endearing phrases about her and telling me how wonderful she was—all of the things that would have suggested that here this poor man was really almost a victim of the O. J. Simpson sort! [laughter]

*OK. [laughter] Well Ty had the impression that you gave quite an impassioned presentation there.*

[laughter] Yes, I think I got the point across that he was quite drunk and that he was really a loving husband. [laughter]

*Oh, dear. And during this period of time, I wonder if you could talk a little about work habits and something about your relationship with the local bar and the local bench.*

Well, the one thing I would say about my work habits, I started out with the philosophy—and I think I've maintained it as long as I've been practicing—that whenever



an attorney runs up against a problem that he's never faced before, he ought to do sufficient research, so he *knows* what the law is regarding that problem and has a clear understanding of how he thinks the solution should be worked out. The principle being that if you slough through a problem the first time—even if you get away with it—you're going to have to slough through it the next time it shows up. So my advice to young attorneys has always been, when you get a problem, really research it. Don't expect that you're going to know the answer. There are few problems in the law that you necessarily know the answer to off the top of your head by virtue of what you learned in law school. If you don't just want to dummy through the problem, you're going to have to research it and learn the answer. Learn something about that particular area of the law, so that you won't have to be helpless the next time that kind of problem comes up again.

That's the first thing about work habits. Now, I think that the other thing I would say is that I believe I was fortunate to be selected in law school for the national moot court team, and I had a wonderful professor. He was kind of a mean, nasty guy, but I had a professor that I think taught me a lot about how to approach solving a problem. And one of the things I learned then, there was a law professor whose little book he steered me onto, called *A Streamlined Briefing Technique*. The professor who wrote that book was a guy by the name of Clyde Emery from one of the Texas universities, who had been a research attorney for one of the major Texas law firms and had really distilled the approach to legal research, *fast* legal research, how not to waste time.

Clyde Emery's little book doesn't exist in the same form that it did, but I still have my copy of it. And I used to give it out to my students down at Southwestern. I guess someone might assume, if the copyright still exists, that

I was breaching the copyright. But I guess all professors do that. [laughter] I think that the reality is that most lawyers have not thought deeply about how to go about researching a legal problem quickly and efficiently. So the second half of my admonition that you better try to solve the problem and get an answer the first time it comes up, the second part of my admonition would be that you better learn how to do that efficiently.

*I'm assuming that at that time, most of the techniques were manual in nature.*

Oh, yes. They were all manual. In any event, if you use the computer for legal research, frequently, those who try to rely overmuch unduly on a computer and build their brief on what the computer spits out for them, they'll be citing cases that simply make verbal statements of the rule that they want but that *really* don't involve the principle that they're interested in in a critical, central way, so that you can say, "That's what the court held in a factually parallel case." And when you get an attorney that does his or her legal research that way, you can generally see that that's what's happened. Then you'd pull the cases; you'd analyze the cases, and very frequently, you'd shove the cases back in their throat! [laughter] They simply don't *really* stand for the principle that they're being cited for. In fact, often they stand for the principle that *you're* interested in establishing.

*Right. Well, it sounds as though you had long work days, in any event.*

Oh, yes. Yes. That's true.

*How large a staff did you accumulate in your office when you were in private practice, and how did you import or use those folks?*

Well, when Sam Lionel and I were together, we typically had a couple of law clerks. It wasn't a big office. Now, I tell him, "My God, Sam. You've had to hire a hundred people to replace me." [laughter] But we mostly did our own work.

*What was the general tone, tenor, whatever, of the judiciary locally while you were practicing as an attorney as opposed to as a justice?*

Well, first of all, we had, I think, some very good judges, and there's been some change in that realm—not all to the good. We had some great judges in Dave Zenoff, who's now retired—he's down in southern California; George Marshall, who was a really able trial judge and a guy that I loved and respected; a guy by the name of Bill Compton, who was a pretty good scholar but lazy. In those days the expectation was that a judge was going to be drawn from the ranks of attorneys that had actually been involved in some fairly heavy practice. The trend has become that the governors began appointing young men that had supported them to a very substantial degree. And when you start putting thirty-five and thirty-six-year-old men on the bench—and I'll speak to women in a moment—you're talking about people that haven't seen most of the legal problems that they're going to be encountering. They just don't really have any time working with those problems. I don't know if you've ever encountered the term *cognitive completeness*?

No.

There's a notion that in order to really understand the principle, you have to work with it enough so that you have a three-dimensional understanding of the problem—*cognitive completeness*—that you get by

working on different phases of the problem. And to be a good judge, you ought to have cognitive completeness of the major areas of law that you're going to have to deal with. For example, mechanics liens: you ought to understand what the overall system of the mechanics liens is. And I think you take somebody that's only got a little time in the practice of law, working for somebody else, just grinding out memoranda on fairly inconsequential matters, that person doesn't have cognitive completeness, really, of many, if any, areas of law that they'll be dealing with if they go on the bench. So what has happened is we've appointing authorities that have appointed men that maybe have been involved in their campaigns or whose brothers have been involved in their campaigns, that really don't have the seasoning, don't have the development.

Now, another thing that's happened as far as the development of the judiciary, we see the women are coming into the picture. And basically, a similar situation results. They find that a career path can be taken that involves running for a lower-court judgeship, like, for example, municipal court or the justice of the peace court. They get out there, and they put up signs, and they get elected for that post. And those courts aren't involved in complex cases, nor do they require any amount of analysis of complex problems. But they do allow someone to get name recognition by running for the office and by getting their name in the paper after they are in the office. And in more than a few instances that I think you will observe, these are women that have husbands that are able to fund them to some extent in their campaigns. So they're successful when they tender themselves. And they have the same limitations that a young male that just happens to get there because he knows the governor, and the governor

understands that that will be a popular choice or a choice that will satisfy that male's church leaders or whatever. So that career path results in women that do not have that experience that brings cognitive completeness of many of the areas of law that they really ought to know something about before they take the bench.

*What degree of legal training is required for the justice's court and the municipal court?*

You just have to be admitted to the bar. Now, it's only been recently, since I came on, that you had to be a lawyer to serve on the municipal bench or, for that matter, to serve on the justice court. So most of the people throughout the state are lay judges. They aren't legally trained.

*I was wondering what influence that had on the way you approached the practice of law when you were appearing before people who really had no background whatever. [laughter]*

[laughter] Well, I never practiced much in the lower courts. My practice was pretty well confined to the district court and the supreme court.

I had some funny experiences, but I won't belabor you with those, [laughter] as far as the experiences in lower court. I was very active in trying to get a measure of education for the justice and municipal court judges after I went on the supreme court. A substantial part of my own efforts was to try to get training seminars for those lay judges that were serving on those courts.

The practice in those courts has not been very uniform. All of those judges kind of handle things in their own way. There was a guy up in Gabbs, Nevada, which is an old mining town. His name was George

McGovern, like the guy that ran for president. And George, who was a nice gentleman . . . I don't know that he ever convened his court. He would simply sit on the porch of the bar, and when people had a problem, they would come up and tell George they had a problem and dispute that they wanted to settle, and they would explain their dispute, and George would settle it for them! [laughter] And we've had some very, very effective people serving in those courts as dispute resolvers. Some wonderful people.

I kind of became the patron saint or guru, or some such term, as to those judges and the function after we created the Nevada Judges Association, which was designed to provide a vehicle for them to communicate with each other and to participate in seminars. I worked on developing seminars for them and ultimately received a national award for that.

But one of the guys that I was very fond of was a guy by name of Ken MacEchern, who had become the municipal judge in Carlin, Nevada, which is up in the northeastern part of the state. He was one of the more dedicated men that helped pioneer the association and hold it together, really a wonderful guy. He owned the truck stop at one time. And when he sold the truck stop, he told me that he then went to bed and rested for six months. When he got up—he had a wonderful, old grandfather clock in his home—the first thing he did was spend a half a year building the clock. When he got the clock built, he decided his next project would be to run for judge, and he did, and eventually raised the money to build the courthouse there in Carlin—I guess it's a courthouse and justice building. But in any event, Ken became one of my good friends, and as a tribute to me, since he was a woodworker, he decided he was going to craft me a gavel and sounding block, and this is what he did. [shows gavel and sounding block]



Well, oh my gosh. Yes.

And you'll notice it has all sorts of different wood. [pounds gavel] Well, he kept track of where he got the wood. He got *all* of the judges in the lower courts in Nevada to go in and get a piece of wood out of their courthouse [laughter] and send it to him. And he kept track of it . . .

*And put it in this little book?*

Yes. As he built the gavel, he created this.

*Oh, that's pretty.*

Which explains what the gavel is and the sounding block.

*"This gavel and sounding block, crafted from wood specimens, assembled for the purpose from historic courthouses in seventeen counties in Nevada, was created especially for Chief Justice E. M. 'Al' Gunderson, Nevada Supreme Court, and is presented by Nevada Judges Association, 1975." That's gracious. And then it has the names of all the counties and the contributing courthouses.*

Yes. Yes! [laughter] And he diagramed them and kept track of them! [laughter]

*Yes. Lovely.*

Now, I've always thought that before I went to that great appellate court in the sky, I would like to do something with this. It's an historical artifact, I think, that ought to be preserved and kept intact after I'm no longer here.

*Hope you can work it out to place your material someplace appropriately.*

Anyway, we had some wonderful judges in our lower courts when I was active with them.

Some of them, as I say, like George McGovern up there in Gabbs, they may have followed somewhat unconventional procedures. But they were very useful people in their communities, and some of them were really pretty knowledgeable about—and *are* pretty knowledgeable—about their expected duties. Ken MacEchern was certainly a good man technically. He read books on evidence; he was concerned with learning procedure. And we've had a number of lay judges in Nevada that I think were really very good judges and superior human beings.

*Yes. Slight change of direction. I wonder if I could get you to talk a little about your community involvement and activities while you were here practicing law. This, of course, was some years ago now.*

Well, when I started practicing, I told you about how I became a member of the Junior Chamber of Commerce, the so-called Jaycees. That was a very fortunate thing for me. The Jaycees was a very active group in those days of pretty much the young, socially interested men in the community. In those days, Mike O'Callaghan was a Jaycee; the guy he ran against for governor, who lost to him in 1970, Ed Fike, was a Jaycee. Just about anyone you care to name, I knew through the Jaycees in those days.

And Al Lermusiaux, the individual that I mentioned to you earlier, he was a Jaycee, and that is where I got to know him. The Jaycees did a lot of community projects. We ran a Victory Over Polio drive to immunize people with the Sabin oral polio vaccine. We charged, I think it was fifty cents a dose, and made enough money that we were able to build the Spring Mountain Youth Camp dormitory.

*Now, what is the Spring Mountain Youth Camp?*

Well, it was the juvenile facility up here in the Spring Mountains toward Mount Charleston. But there were a lot of other projects. It was a very energetic, aggressive group of people. We did a toy drive at Christmastime, and I used to play Santa Claus. Actually, we always engaged in such things as the local Helldorado parade. I'll show you this picture here. We would have floats in the Helldorado parade. We would raise money by selling Cadillac tickets, tickets on the Cadillac raffle at the time of Helldorado, and use the money for various charitable purposes. We organized the community fair, which were the first fairs in Las Vegas. All sorts of money-making projects that we used to fund charitable endeavors.

But for *me*, it was a very happy experience, because I met most of the people that became my clients and most of the people that ultimately became consequential in political life around Las Vegas. So if it weren't for that pregnant goat, there's no telling what would have happened to me! [laughter]

*That's a great story! [laughter]*

I'm sure that this particular guy that came after me to get me to join up wouldn't have bothered with me if he hadn't had that pregnant goat in his yard with his kids petting it, and wanted to get rid of it.

*[laughter] Right!*

So that was one thing that I spent a lot of time on. I did become chairman of the Clark County Child Welfare Board, and actually, I served on that with Gene Segerblom. You probably heard her name. She became an assemblywoman. Gene and I became friends then, and she became a big supporter of mine when I was running for the court, up in Boulder City.

Her husband was one of the lay judges. He was a fine artist, Cliff Segerblom. But he was the local judge out in Boulder City in their municipal and justice of the peace courts. So that was probably, as much as anything, the luckiest thing that happened in terms of opening doors to meeting people.

I think the great thing about the Jaycees was that since it was an active group, and you worked on projects—and you really did work on them—you got to know people in the same kind of way to some extent as you would in the service, marching with people and going on maneuvers with them. It was a thing that really made for true friendships. So those two things were civic activities.

Oh, I was active and contributed my services as the counsel to what was then the Clark County sheriff's department, to their deputies' organization. I guess they called it the Clark County Sheriff's Protective Association. And had something of a debacle trying to get civil service for those fellows, which did not make the sheriff at the time very happy. He didn't want any encroachments, any constraints, on his authority. So I would say those were probably the three major activities.

*Were you active in the state and national politics at all, other than the judicial matters?*

Well, I became modestly active in individual campaigns, but I did not involve myself in national politics. I was on the Democratic Central Committee at one point in time, but I was never one of the major players in that organization.

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## RUNNING FOR JUDICIAL OFFICE

*I see. At what point in your career did you begin to think that the judiciary might be where you'd like to go next?*

I always had a sense that I would like to be a judge. I guess that I formulated that notion when I was in law school, and I read Catherine Brinker Bowen's book, *Yankee from Olympus* about Oliver Wendell Holmes. You've probably read that book.

*Heard about it.*

The idea of being an appellate judge, particularly, and trying to write opinions that were both clean and pretty—that was an appealing enterprise, as far as I was concerned. So I was interested in the appellate judiciary really since law school.

But, of course, since I was busy trying to support myself as a practicing lawyer, I realized that I was not very likely to be chosen by a governor to be appointed and that if I wanted to be on the bench, I'd probably have to run for the bench, which I did. There

came a time when Jon Collins, who was on the court, decided he was not happy with the salary there and that he needed to get off the bench in order to do right by his family, so he left the bench. He announced that he was not going to run again. He didn't resign; he just didn't run again. And I determined that I would run for his seat, the seat that he had occupied.

At that time the political power was weighted toward northern Nevada and largely controlled by a gentleman named Bill Woodburn. And the power structure up there decided that they were going to select a man that they wanted to put in there and support him. He was a man by the name of Harold Taber. So they immediately had him announce that he was going to run for Jon Collins's seat as soon as Jon Collins announced that he was not going to run again. Taber announced that he was going to run, and that didn't deter me. I figured, "Well, that's fine. Now, all I have to do is beat Harold Taber." So I went out to do that. Actually, let me see. If you step over here, you'll be able

to see I have our respective bumper stickers. You'll notice that Harold Taber on his bumper sticker put forth the slogan that he thought was going to win for him: "Ask Your Lawyer." But unfortunately, that kind of worked against him. He got caught up in a scandal during the campaign, in the midst of the campaign, involving a case called *Ponderosa Timber and Clearing Company v. Emrich*, in which he had engaged in some pretty egregious misconduct so far as most lawyers were concerned. And that broke in a column by Paul Price, who at that time, was kind of a well-known, what would, I guess, be called a muckraker. Paul had a column that was pretty tough. And, in Harold Taber's case, he began it with the phrase, "Ask Your Lawyer," and went on to tell what Taber's conduct had been in the *Ponderosa Timber and Clearing Company* case. And as part of my campaign, I published ads that simply reprinted Paul Price's column. And I beat Harold Taber in virtually every county of the state, including his home county.

*Which was what? Washoe?*

Elko. There's a Taber Creek up there and one thing and another. It's an old family. But, yes. I beat him in his home town. But principally, I simply outworked him. And one of the things that enabled me to outwork him, though I didn't have a big staff, was the fact that I had access to the scheduling efforts of, well, of the two gubernatorial candidates. So one in particular was giving me his schedules. So I was always everywhere ahead of Harold Taber. And he didn't know where he was supposed to be. I beat him pretty substantially.

*What did a position of that type pay in those days? What was the salary for a judge?*

I think, when I took office, it was twenty-eight thousand dollars. It was . . .

*Not much.*

No, but the thing of it was, the reward that I wanted, I wanted the opportunity, as I say, to try to write pretty and scholarly opinions. And I foolishly did not stop to consider the fact that probably the legislature was not going to be fair ever to the judiciary in terms of salaries. And it never was.

*By 1989, when you left the bench, what would the salary have been?*

Oh, gosh. You ask painful questions.

*Sorry.*

[laughter] But no, I can't recall what that was. It is sad, and I might also say shortsighted, that the legislature has always had, I think, an ugly attitude toward lawyers and toward judges—almost a punitive attitude. They have not been receptive to paying the kind of salaries that will enable judges to remain on the bench—which is why Jon Collins decided that he had to leave.

*I imagine that made it very hard for people if they had families, to support to do that and still do an adequate job.*

Yes. So, ultimately, I decided myself that I would leave the bench and go to teaching, because I could get a fairly decent salary teaching and augment it with my judicial retirement.

*What is the judicial retirement system in Nevada? Is that part of PERS, the public employee system, or something similar?*

No. It's on a different percentage basis. The increments are a little bit larger.

*I see. No, public employees right now are, I believe, in the school district, for instance, the district contributes 18.75 percent of the person's salary toward retirement. And that's both sides of the equation. The employee doesn't have to contribute anything.*

Yes.

*So you successfully ran for office; it would have been 1970, I believe, that you went on the bench and started off in a slightly different career path or different view.*

Right.

*At what point did you become interested in the issue of judicial behavior and so forth, based on the Duke professor's work?*

Well, we had a guy on the court that was prone to engaging in what I would consider to be extremely deviant behavior. And the short answer to your question is the desire to find an explanation for that deviant behavior led me to read material of various kinds on paranoia, on psychopathy, and so on.

One day we had a PhD in political science, whom I consider a very, very bright woman, was working as a summer intern at the court. And she came in, and she had James David Barber's book in her hand. She said, "I think you should read this book."

I said, "Well, why?"

And she said, "Because you will find that Justice So-and-so is Nixon."

I read the book, and she was absolutely right. The way Barber analyzed Nixon totally paralleled the behavior of this guy that was, I considered, such a deviant, who was on our

court. So that led me to do further reading in related ways and really kind of opened my eyes to where I was in my problems and in the court's problems with this individual.

*And my recollection is that Barber describes Nixon as an "active negative."*

Active negative. But if you really carefully look at what he says, he sees Nixon as way down the line at the paranoid end of the active-negative spectrum. And this individual had serious problems with his vision of reality that pretty well would identify him as a man who, under stress, was capable of slipping into paranoid states.

But interestingly enough, an individual in Reno represented a lawyer in a suit against that judge, in which he was endeavoring to prove that the judge had been writing poison-pen letters about his client to newspapers, trying to . . . . In any case, this lawyer up in Reno pressed a lawsuit on behalf of a lawyer that had had some poison-pen letters written about him directed to newspapers and had sued this particular justice, this member of our court. And as part of the proof that he developed, the Reno lawyer retained quite a famous psychiatrist to do an analysis of various material. The psychiatrist was a guy by the name of Martin Blinder, and Blinder was the psychiatrist that became famous in a case called the Chrisci case, and I'm not sure I can spell that. But in any event, Blinder serves on the faculty of major Bay Area universities and medical schools. [laughter] And when you got through reading Blinder's deposition, you were totally convinced you knew who had written the poison-pen letters. Some of which were written about me, too. It's nice to have a colleague that does that kind of thing to you. Incidentally, our laughable judicial discipline commission never saw fit to pursue that, even though one of the country's greatest forensic scientists also identified this justice as the



author of the poison-pen letters by analysis, by comparison of the letters to exemplars that were identifiable with his typewriter.

*I have a letter, an article here from the Review-Journal. This is November 7, 1980, and it talks about the Nevada Judicial Discipline Commission. And in one of the references here, it says something about a justice by the name of Mowbray, writing anonymous letters impugning the reputation of Justice E. M. Gunderson and being typed on his typewriter. It's over there in about the third column.*

The justice in question wasn't . . .

*Was not Mowbray.*

It was not Mowbray who was responsible for the poison-pen letters, no.

*Somebody else. OK. No accusation. I wondered if you could talk a little about how you arrived at the decision that it was time to make a run for the Nevada Supreme Court and the procedure you went through in terms of being elected and so forth.*

Very well. First of all, I think we should begin by talking about what the overall political climate of Nevada was at the time that I ran for the court. The situation in Nevada was that the dominant political power at that time was based in the north—in Reno, predominantly. In that regard, you have to go back almost to the beginning of the state. There was a law firm there in Reno called Woodburn and Thatcher, and Woodburn and Thatcher represented a gentleman by the name of George Wingfield. George Wingfield was an individual about whom a book has been written called *George Wingfield: Owner and Operator of Nevada*. Wingfield was a man who

started out as a cowboy; began then to become a gambler; and ultimately, with the money and influence that he gained from gambling, he got into entrepreneurial ventures as a miner, and in banking. He built the Riverside Hotel in Reno, and I believe he built the Goldfield Hotel or had a role in Goldfield. He may very possibly have had a role—probably did—in the creation of the Mizpah Hotel in Tonopah. But in any event, the author of that book felt that it was appropriate to call him “the owner and operator of Nevada.” He was one of the major political kingpins. In fact, he officed there in the Bank Building with Woodburn and Thatcher, which later became Woodburn, Thatcher, and Forman. And I’ve read somewhere that in those days, when they were both officing together up there, Thatcher, I believe it was, someone in Woodburn’s firm, was the Democratic national committeeman, and someone with Wingfield was the Republican national committeeman. So the story is that when people would call and ask the switchboard, which was a joint switchboard, for the national committeeman, the switchboard operator would say, “Which one?” So that was really the central power base in Nevada at that time.

There were other individuals of very substantial consequence up there at that time. Of course, Fleischmann, who later founded the Fleischmann Foundation with the resources that he acquired through Fleischmann yeast. Another individual who became a big political player was an individual who came here and got heavily involved in real estate, a fellow by the name of Norman Biltz, who had a role in seeing to it that one individual’s senatorial ambitions were quelled, and another was elected to the senate. But Biltz was a player there. E. L. Cord was a significant figure. Of course, E. L. Cord was the person who inaugurated the Cord

automobile and owned one of the TV stations up there when it was first started. Actually, Jim Rogers, now Sunbelt Communications, owns that station today.

But there were many significant figures up there that had the money to impact on the politics. And there were very few people down here of much consequence. And that is important to understand in the background of *my* coming on the court.

In 1970, when Jon Collins decided that he no longer wanted to try to survive on what the legislature had decided was appropriate to pay supreme court justices, he announced that he would not refile for office, and that set off the question of who would replace Jon Collins, who was a native of Ely, Nevada—small town. The Reno establishment, of course, particularly as represented by Bill Woodburn Jr., who was by then the controlling figure in the firm of Woodburn and Thatcher—he and his friends in the bar association up there pretty well considered it their right and the expectation that they would designate who would succeed Jon Collins.

I might mention that the Woodburn dynasty, as I understand it, went back to the early days of Virginia City. I believe Bill Woodburn's father, Bill Woodburn Sr., had been a union business agent up in Virginia City, had studied for the bar, and ultimately become a lawyer and a prominent figure in Nevada legal circles and politics. And, of course, his son, Bill Woodburn, was by that time a consequential lawyer and political figure in Reno.

In any event, it was obvious that the Reno establishment knew that Jon Collins was going to retire from the court and had pretty well made their selection before he announced his retirement, because they knew of it. Harold Taber had been identified as the person who was worthy to succeed Jon

Collins. He immediately announced that he would run to succeed Judge Collins on the court, and, as was anticipated, I'm sure, that tended to quell the prospect of other persons presenting themselves as candidates.

I reasoned a little bit differently. My attitude was, "Well, if Harold Taber is going to keep everybody out, that's fine. All I now have to do is beat Harold Taber." So in due course, I announced that I would run for the supreme court also. Now, before doing so, I checked with some of my friends in the Reno bar who committed to me to support me, based on the fact that they knew me and had worked with me and considered me to be an able lawyer, presumably. But as the influence of the Reno establishment made itself felt, the friends that I had up there and, for that matter, friends that I had down here began to fall away from me, as it was suggested to them that if they wanted to maintain their friendships and ties, they really should not support me but should support Harold Taber.

So being a kind of a stubborn kind of guy, I decided to run anyway. So I carried through with my announcement and filed against Harold Taber. The campaign was marked by the fact that Harold Taber campaigned at cocktail parties at the golf course up there, and I campaigned at such places as outside the gates of the smelter out in Ely and the places like that, and went around and saw the little, old ladies in tennis shoes to get their support. And one of them was a woman by the name of Edith Waters that I really should tell you about, because in different ways she figures in the later history of my time on the court.

Edith Waters was the wife of Richard Waters, Judge Richard Waters Sr., and, after his death, became a political activist for the Democrats up there in Carson City and was the kind of person that put on her tennis shoes and walked from door to door passing

out literature. So I went to see Edith Waters, and she had already heard about me from her stepson, who was also a judge, Richard Waters Jr., who was the judge in Douglas County, which is south of Carson City. So she was prepared to commit to help me. And inasmuch as she was already helping Mike O'Callaghan and working for him, she organized her followers to solicit votes for me as they went through Carson City passing out Mike O'Callaghan's literature. And one of my favorite stories is one she told me during the campaign. My wife, whom I don't believe you have met yet, is Mexican. And, of course, in Reno the minorities, particularly in that day, were not very well received. But I guess Harold Taber's supporters did not feel that merely being a Mexican was a sufficient accusation to pose against Lupe. The story that was circulated about me, which was supposed to be very negative, I guess, was that I was an ultraliberal married to a Negro. And Edie Waters told me that one of Harold Taber's activists came to her door, and in the course of trying to convince her that she should not support Al Gunderson, but instead should support Harold Taber, said to Edie, "Well, Edie, don't you realize that Al Gunderson is an ultraliberal married to a Negro?"

And Edie told me she looked at the lady and said, "Well, as long as he's not married to a Laxalt." [laughter] But that was the kind of woman she was. Very outspoken and very opinionated. On the gate of her little house, which was right on the outside of Carson City, heading out to the Carson Hot Springs, at a time when Richard Nixon was having his problems back in Washington over the break-in at Watergate, Edie Waters had a sign on her gate that said "Waters Gate." But she was a wonderful supporter and became a very good friend. She and my wife and also Carolyn O'Callaghan, they would stop and go

through Waters Gate and rap on Edie's gate and drink wine with her in the afternoon while I was on the court. They would spend afternoons talking politics there and sipping wine.

But anyway, needless to say, as one who had to be dependent on the common herd to get elected, I ran a different kind of campaign than Harold Taber, that was dependent on people like Edie and friends of mine, for example, over on the Westside of Las Vegas, what is *still* the black side of Las Vegas, the side on which the largest percentage of black citizens reside. I had represented quite a few people over there. There weren't any black attorneys in Las Vegas at that time to speak of. Charlie Keller had arrived, but I still represented a number of black people, including Charlie Keller. I defended him against what I considered to be a frame-up of Charlie by people in the bar association. So I had pretty strong support over there, and we concentrated there, which was an area that Harold Taber had no entrée to. And I had, as I think I mentioned before, a good base of support within the state Jaycee organization, which eventually supplied me with a campaign organization throughout Nevada.

So eventually, because of that, and because of the scandal that erupted as a result of Harold Taber's conduct in the *Ponderosa Timber and Clearing Company* case, which I mentioned to you before, and just the fact that we moved everywhere, to all of the political events in the state, those things got me elected with not only quite a good plurality throughout the state, but winning by far the majority of the counties in the state.

I like to tell the story about winding up in Eureka for the Eureka Rodeo to campaign there. It was one of the few times where I was at an event where I probably should have



been somewhere else, because none of the other candidates in the statewide races were at Eureka that day.

It may have gotten better as I tell it over the years, but as I tell the story, there was only Lupe, my wife, and me in the parade with a *llama*. And I like to say that the llama won the sweepstakes award, but that I won best political entry. Now, it is true that we were pretty much alone in the parade with the llama, but I can't really certify for sure that the llama beat me for best political entry. That may be my embellishment.



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## SERVING ON THE COURT

After I won, of course, I took my seat on the court on the first Monday in January, 1971. And I guess we should then proceed from there.

*Well, I was going to ask you about the way this movement changed your income situation. I would assume that they weren't paying real well in those days, and this must have made a difference in your lifestyle, at least initially.*

Well, when I got into the race, I had not really thought about what might result when I won it, as I expected to do. I didn't realize, first of all, how really reticent the Nevada legislature would be to consider fair and timely raises to judges. The legislature has always taken an ugly attitude toward attorneys on various types of legislation, and since judges are attorneys, the ugly attitude carries over toward the judges. And it was probably my naiveté that caused me not to give any weight to that when I filed. But it was a disillusioning thing over the years. The reality was that in order to stretch my income

to pay for food, I bought clothes from the local clothier that was there in Carson City that by any stylistic standards were pretty horrible. I don't mean to engage in self-pity on behalf of the judges, but it certainly is unfortunate, I think, that the people who join the judiciary essentially are not allowed to live at a level that is commensurate with what the attorneys of the talent and quality that we hope for in those positions should and can normally anticipate in private life.

In any event, yes. To answer your question, it was startling to realize over time what one really does have to give up to be on the bench. And in that regard, I would say it is especially startling to realize that not only does one have to work very hard to do a good job for inadequate pay, but also gets put in the position where, as a judge, he or she will be seized upon as a target by journalists looking to make a story, looking to satisfy their bosses and produce a product for the newspaper that will warrant a headline that will sell newspapers. And I've seen innumerable stories, not only about myself, but about

colleagues and other judges I knew on the judiciary that have been degraded by some of the people in the press, who exploit them as fodder for stories that are not only unfair, but in many cases untruthful.

*Maybe we should shift now and talk about some of your early experiences on the bench. When you arrived there, of course, you had to check out the territory. Could you talk about your office arrangements and the associations you had with other judges on the bench in the early days? And maybe give us a typical day; talk about how your day would have gone.*

Well, the court had been fairly recently enlarged at the time I got there. The two most recent appointees were Justice Cameron Batjer and Justice John Mowbray. And the court did not at that point in time have enough chambers for all of the judges. The courthouse had been built back in the 1930s, about 1935, and it had a justice's chamber on three corners of the second floor. So, actually, when the court was enlarged, they put a fourth justice's chamber on the second floor in a corner where the clerk's office had previously been, and they made a smaller chamber that was also on the second floor but very much smaller. And Justice Mowbray, when I arrived, had been in the smaller chamber. And given the fact that Justice Collins had left, Justice Mowbray moved into the chamber he had occupied, and I moved into the small chamber that he had been occupying. Eventually, the courthouse was again remodeled, and a chamber was built for me with accommodations for my law clerk down on the first floor. I notice that you have in your sheaf of materials there, if you can just hand those to me, I'll find it.

The first piece of paper you have in your sheaf of papers is a reproduction of an article

written by Darrell Kelly of the *Reno Gazette-Journal*. [laughter] One of the amusing things about that story is that Darrell Kelly, whose talents I always thought were pretty minimal, and whose fidelity to truth was even less—Mr. Kelly decided to spice up his story with a statement that talks about me in the context of the court, and he said, "Justices Manoukian, Mowbray, Thompson, and Batjer work on the second floor of the aging supreme court building in Carson City." He goes on to say, "Justice Gunderson, though four years removed from his last term as chief justice, remains in the traditional chief justice's office on the building's first floor." Now, I don't know whether Darrell Kelly was simply blatantly lying and knew that that was nonsense, or whether somebody had told him that lie, and he was too lazy to check with me or anyone else to find out if it was true, but the implication of that, of course, is that I was so power-mad and so hungry for distinction that I would not relinquish possession of the traditional chief justice's office, which he claimed was on the first floor. Now, the fact is, as I've just indicated to you, the office that I was in at the time of this article by Darrell Kelly was constructed for me in the remodel of the supreme court building, and I was the first person that moved into it after the building was remodeled on that occasion. I moved directly into it from the little office on the second floor, where I had been initially assigned when I came on the court, and Justice Mowbray moved into Justice Collins's office. So it was not the traditional arrangement.

[Conversation begun off tape] . . . they'd get paid by clients if they can find some excuse to litigate on their behalf. And unfortunately, many lawyers are not too meticulous about deciding whether or not they have a legitimate issue before they decide to litigate it.

*And I wondered if that helped to add to the caseload that you folks were faced with.*

Yes. There is no question, but we're getting more and more lawyers because the law schools, in order to survive and provide positions for their professors, have to keep admitting more and more students. And those students, once they graduate, have to go out, and in order to survive and feed their little families, they have to take on what cases are available to them and find some colorable reason to litigate those cases in order to generate fees. And the truth is that very often lawyers aren't ethically very scrupulous in deciding what issues are legitimate to raise and what issues aren't legitimate to raise. And when they cast about and raise and litigate issues that are lacking in substance—that is to say, that are frivolous—they burden the courts, and essentially, they defraud their clients.

*Maybe this would be a good time to get your views on the qualities and qualifications for a good judge, and you've already said something about lawyers; maybe something about court administrators, people that make things happen.*

[laughter] Well, you know, Whizzer White said something to the effect that a good judge should be reasonably intelligent, reasonably industrious, and reasonably honest. [laughter] Well, that's awfully simplistic. [laughter] But what I think is unfortunate is that we get people onto the bench, at least onto the appellate bench, that really don't know what a good judge would be doing there. They don't know at a theoretical level what a common-law court, a court that makes precedent, what should be done at that level. They don't understand how appellate courts

should go about building a uniform, or if not uniform, a coherent *corpus juris*. I think an awful lot of them embrace the idea that suddenly because they are judges, they are now empowered to make proclamations and to make those proclamations without really *very* seriously consulting either prior precedents or thinking deeply about the social and economic consequences of their decisions. Now, the great law schools, their professors, theoreticians, think about these things, but a lot of people that go on the bench don't have any coherent concept of what the function of an appellate judge should be.

*And it's my understanding that there is no court of appeals in Nevada. Could you explain your understanding of why that is and why the steps have not been taken to create such a body?*

Well, the steps *have* been taken to create a court of appeals. The problem is at each time that it has been presented to the public, the public has rejected it. The public has rejected it in part because of the way it has been structured, and partly because some of the know nothings at the newspapers have not well understood what they're talking about. Some of the journalists, I think, have seen legitimate problems and attacked the proposals for legitimate reasons. But some of them have simply attacked the proposals more or less unthinkingly without knowing what they're talking about. In any case, the proposals for a court of appeals have not received favor from the journalists and have motivated public opinion against them.



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## JUDICIAL DISCIPLINE COMMISSION

*Sometime during your career, probably in the early 1980s, you became interested in the issue of judicial character and did some writing yourself on predicting performance on the bench in one article and another one called “Jurisprudential Character” and applied the typology of James David Barber from Duke. I wonder if you’d talk about that—what it was that captured your interest in that area and how you dealt with it intellectually?*

Well, as I think I mentioned to you, one summer we had a Ph.D. in political science working as an intern at the court doing a study. She was particularly assigned to review tapes of oral arguments to see which had historical value and which did not and therefore could be discarded. So she had listened to a lot of tapes, and, of course, in the course of listening to those tapes, she heard the judges talking on the tapes and the questions from the bench to the lawyers, and she read the bench memos relating to those cases. And she came in to me one day with James David Barber’s book, *Presidential Character: Predicting*

*Performance in the White House*, and said, “I think you should read this book.”

I said, “Well, why?”

And she said, “Because you will find that Justice Soand-so is Nixon.”

So I read the book, and I became convinced that from the standpoint of character and from the standpoint of his psychological mind-set, that the justice she referred to was indeed a human being of a very similar sort to President Nixon, that he was an active negative, to use Barber’s typology, which means that he had strong paranoiac threads in his personality and that he was far at that end of the spectrum as opposed to the kind of person that Barber describes as an active positive, who is a genuinely optimistic person with a positive outlook, and who takes a genuine *enjoyment* from his activities or her activities.

So I read that book, and it was very helpful to me, because then I knew what I was dealing with in regard to this particular justice. Some of the articles that you have in your folder that I’ve looked over reveal to me

that the ignoramuses in the newspapers just *never* came to understand that individual, even though it became revealed that he was writing poison-pen letters about litigants who were before the court and about me, personally, and had been rather conclusively determined to have *been* writing those letters, which, frankly, were felonies. And they treated that very lightly and without seeing the consequence of having a man this incapacitated on the court, with whom others had to serve, and who litigants had to have judging their cases.

*What was the outcome of all of this? I realize this is happening in the early 1980s, at least according to the newspaper reports. How was the matter ultimately resolved?*

Well, the matter was really never ultimately resolved in the sense that any action was taken with regard to this conduct. The only action that was taken was inaction. The discipline commission elected, eventually, as a body, to sweep it under the rug. And I might say that the discipline commission, while I am credited for my efforts to create a discipline commission, I'm not very proud of the fact that I had a role in helping to create that body, because I think it's been a terrible failure and indeed a burden on the system.

*Could you help me understand the role of the judicial discipline commission, how it functions?*

Well, political theorists say that of any mechanism there is a theoretical model and an operational model. And the problem with the discipline commission, as it has come to be in Nevada, is that it has a theoretical model, and it has an operational model that has deviated far from the theoretical model.

*In what way?*

Well, the theoretical model would be fairly simple: that is, if you have a body of seven people appointed by three different appointing authorities—the governor, the state bar of Nevada, and the supreme court—and that those persons would *apply* and enforce rules of conduct that presumably would be established in advance as norms, and that they would conscientiously look at facts that were presented to them and determine then whether those norms had been violated, and if so, impose a sanction for it.

Now, that would be the expectation: they would conscientiously apply the facts to the legal precepts that were laid down for them. The problem is that the creeps—and I say “the creeps”—that get appointed to the discipline commission don't *want* to do that. They want to feel like they're there to be lawgivers. The problem is that what we have is the situation where some undistinguished person, who has no real education, will want to find a foothold in politics. And looking for an entry level into politics, the thought will cross that person's mind, “Ah, maybe I can get the governor or the board of governors, or maybe if I'm a judge, the supreme court, to appoint me to the discipline commission. Then that will get me a position of some public consequence, and it will also give me some other benefits like the opportunity to travel a little bit and to have some free meals and a free car, a free hotel room when we have hearings, and go here and there and pass myself off to my friends as important by telling them that I'm Governor So-and-so's appointee to the judicial discipline commission.” So they lobby to get that position either from the governor or from the board of governors or from the supreme court.



Someone has suggested that the thing an appointing authority ought to do in regard to making appointments is when they see someone wants an appointment, the appropriate thing to do, the responsible thing to do, is not give it to them. But these people very frequently who are hungering for these positions are hungering for them *not* because they want to see the judiciary better—because they see this as being an advancement in their own lives, and, consequently, they get themselves onto the discipline commission. And the last thing that they want to do, when they get on the discipline commission, is *study* the legal system and the rules of conduct that *relate* to the legal system, and then make mature, sensible judgments about whether some allegation about a judge really consequentially impacts adversely upon the expectations as embodied in those rules. That isn't what they want. They want to be there to exercise power and to be important and to be seen as important and to get the benefits, like the free automobiles and the free hotel rooms and the free meals.

And, of course, you see, I am familiar with this not only because I was instrumental in creating the theoretical model, but have been exposed to victimization as a target by characters who have found their way onto the operational model, and then eventually served on the commission itself, and, for a while, was able to correct some of the problems with the discipline commission which later surfaced.

Incidentally, I was thinking in preparation of our meeting that I might give you this. It's a copy of the Herbert Harley Award, which was awarded to me by the American Judicature Society and documents the fact that they recognized my involvement in the creation of the Nevada Judicial Discipline Commission.

*Would it be acceptable to read some of this into the record?*

Well, you may take that.

*Good. Now, you said you yourself had been, I guess, the target or the victim of some of the operations of this commission. Could you describe that in a little more detail?*

Well, of course. [laughter] We, as I say, had an individual who came on the court just before 1980. I think that was the date you mentioned, and I accept that date as being roughly correct. Actually, we had this individual come on the court, and I mentioned also the fact that there's no such thing as a power vacuum, and there's only power poorly exercised or inadequately exercised. And when this individual came on the court, I was, I suppose, from his perspective, running the court more than he felt he would like to see. Of course, I'd been there a long time, and lawyers had gravitated to see me, because other people were not accessible. They were off here or there chasing around northern Nevada with their law clerks, sometimes with their female law clerks. And when this individual came on, I think it's fair to say that he did not like the fact that he did not have the same control, the same consequence as regard to the staff, as I did. He took several deviant means by which to try to change the power relationship. And one of the things that later appeared from the investigation of qualified investigators was that as a result of his activities, poison-pen letters were sent out to the newspapers about me and actually about litigants *in* the court that he had grievances against. And then in addition, this individual . . . as you know from your reading, one of the things Darrell Kelly says was I wouldn't talk about other members of the court.

But other members of the court whose conduct I considered deviant *did* talk to the press and did try to agitate the press in regard to me, in part to try to agitate the discipline commission to give credence to the idea that I was a disturbance within the court. *And* one of the bizarre things about this was that the thrust of what was being said was that I was guilty, if you will, of *infighting*. Infighting.

Now, there was a reporter with one of the wire services, who incidentally had a substantial problem with drink, but he, like all reporters, needed to generate stories in order to convince his employer that he was doing something worthwhile. So when opportunities were fed to him to write stories favorable to our new member that created an invidious comparison between our new member and some of the other people on the court, particularly myself; this reporter, of course, for convenience was more than ready to latch on to the subject matter that was tendered to him and write stories. And one of the things that was a predominant theme of his stories was that there was all this terrible infighting going on within the court.

Now, if you read Walter Murphy's book, *The Strategy of Judicial Decision Making*, you'll see that basically an appellate court exists in essence and in part to infight, to thrash out differing views. And it's *not* expected that they will agree; it's not even expected that they will disagree *nicely*. On *occasion*, they are expected to basically confront each other with sanctions and let the other parties know: "Listen, if you try to say that, I'll dissent. I will publicly expose the untruth of what you're saying in a dissent." And thereby, hopefully, the appellate court will issue a decision eventually that conforms to reality and that conforms to good sense legally through the process of thrashing it out within the court,

which can only really be characterized as infighting.

But this individual, who, as I say, was fundamentally at the paranoid end of the personality spectrum, internalized the process as being infighting against his noble personage. Did you ever see that cartoon "Eek and Meek?" There was a cartoon a few years back, "Eek and Meek," and periodically there'd be a cartoon based on the International Society of Paranoids. And the idea was that the International Society of Paranoids . . . there were references to infighting in these cartoons. Well, this individual really believed that he was being infought against. And the wire service reporter that he put his arm around, and cozied up to, and cuddled, and made a pal of, really believed, I guess, that when he was writing stories about infighting, that he was saying something that made sense. I once said to this guy, "Would you tell me what you mean by infighting?"

And he looked at me and said, "Well, you know what I mean by infighting." He had no idea what the appellate process was about, but he had been told by this individual that was writing the poison-pen letters to try to stoke the flames—so he believed that he was really onto something. And the flakes back at his wire service headquarters apparently must have believed that, too, because they let him go on doing that.

In any event, ultimately—if you can believe this—the political appointees on the discipline commission decided that it would investigate infighting on the Nevada Supreme Court, and they started an investigation.

When they filed their initial document, they did not accuse any particular person on the *court* of infighting. They just referred to the fact that they were going to undertake an investigation of the public allegations of

infighting that had appeared in the press. So what you had here was no identifiable fact being alleged, but now the discipline commission, composed of these political yearners that had managed to ingratiate themselves onto the discipline commission, they were going to investigate infighting. Of course, remember, that on this commission most of the people are not legally trained. There are two judges, there are three lawyers, and three lay people. But the individuals there were . . . well, I'll go into who they were and what they were, and I'll only as a preface at this point say that with the exception of Renee Diamond, who had been a legislator, or later became a legislator—I forget which—with the exception of Renee, there were several that were certainly a pretty sorry lot.

But one of them, a judge from central Nevada, has a reasonably sordid history himself. He was the central figure in a book called *Nye County Brothel Wars: A Tale of the New West* by a woman by the name of Jeanie Kasindorf, and that has to do with the way money passed hands for the privilege of operating houses of prostitution in one of the counties that he presided over. And some really remarkable statements could be made about other people on the commission at that time.

But they had decided to investigate us, and they went and hired a guy that I later came to love, as an investigator. He was an individual named William Weissich. He was selected while I was supposedly *not* the target. He later acknowledged to me after the fight was all over that he had been programmed to get me. But William Weissich was a really well-qualified human being, and unfortunately for the discipline commission's efforts to do a hit on me, he was also a man of great integrity, because ultimately he decided that there were

three people on the court that ought to be disciplined and probably removed, but that I wasn't one of them. [laughter] Actually, the attorney who sat through his interviews of me is now our mayor, Oscar Goodman.

We fought to get an opportunity to be interviewed about all charges that they were considering before they were brought, because I wanted an opportunity to have input with regard to them. And finally we forced them to allow me to be interviewed. They had essentially been planning to charge me without giving me an opportunity to be heard, which would have, of course, destroyed my life. But we embarrassed them so much that they gave up that idea and made Weissich come back and interview me.

So Oscar and I sat together and I was interviewed by William Weissich for several days in my chambers at Carson City—the chambers that Darrell Kelly calls the traditional chief justice's chambers. And when we began, I said, "Mr. Weissich, you've been investigating me, I understand. I've been investigating you. I understand you're a rigid Christer." He looked rather startled, and I said, "I don't give a damn about you being a rigid Christer, as long as you're able to be fair. So when we start out, I want you to make a commitment to me that whatever you've been told, you'll tell me, and then you'll be willing to listen to me about what I tell you, and you'll be willing to listen to the people that I bring into this room to corroborate what I tell you. And you can be as rigid a Christer as you want if you'll do that."

So we set out on that basis, and we spent, I think, three days, from Monday through Friday. And one thing that was very interesting: I had prepared myself on the basis of any lie that I thought could possibly have been told about me. I had prepared

documentation that would corroborate my version of what I thought might be said.

And one thing I found that actually I think Oscar told me, that people don't generally lie just to create lies out of whole cloth. They see something that they're uneasy about or that has caused a confrontation, and then they try to restructure that and restructure it in a way that does them credit and creates a negative picture of their opponent. So I had gone back and figured out all of the things that I thought that our paranoid, if I can call him that, based on my perception of him as Nixon, everything that I considered that he *might* have tried to restructure as a basis of a complaint against me. And we spent those days going through them.

I'd love to tell you, and maybe if we ever have a chance to sit on the back of a houseboat and drink a few beers, I will. But I won't try to go through all of the accusations that were made. At first he was reticent to tell me about them, because he said, "These are very uncomplimentary about you. Frankly, they suggest instability on your part."

And I said, "That's fine. Tell me about them. Give me a chance to tell you." So we went through them one by one, and as Oscar had suggested to me would be the case, there was a core of falsehood in every one of them. And not only was there a core of falsehood, but it was a core of falsehood that I could prove from documents that I had. And it was funny why I had the documents, because when I came on the court, I had read a book called *Deciding Appeals*, by Carl Llewellyn, who was a scholar at the University of Chicago, and he talked about how valuable it would be if you could get a judge to save everything regarding the decisional process that he encountered when he came on the court—all the memoranda, all the bench memos, et cetera—and that that would be

a gold mine in order to develop a vision of what the judicial process was. Well, in my case, I did it, but it wasn't a gold mine to write a book; [laughter] it was a gold mine to be able to result or repel allegations about me. So some of the things that we had to deal with dealt with the things that I had said about one of the justices and one of his female law clerks. And I was able to demonstrate that I *had* said it. He said, "Did you say that?"

And I said, "Yes, I did."

He said, "My God, you admit it?"

I said, "Yes. Of course, I do," I said, [laughter] "because it's true." So we went through that, and we went through other things.

And eventually, William Weissich turned to Oscar Goodman and he said, "My God, Oscar, how would you like to be trying this case?"

And Oscar smiled at him and said, "Bill, every minute we go on, I'd like it better." [laughter]

When we got through, he was going to fly down to Las Vegas, and Oscar was going to fly down to Las Vegas, and they happened to be on the same plane, and they were getting ready to go. And as they got up to go, I said, "Well, Mr. Weissich . . ." And I knew that they had a meeting scheduled very shortly thereafter the following week at which they were going to discuss whether or not they were going to charge me. And I said, "Mr. Weissich, are you going to recommend charges against me?"

And he said, "Well, if I recommend any charges, it won't be against you." Now, later he told me [with emotion] that he had reported back: "You programmed me to get Al Gunderson, and I'm rejecting the program. You have three people on that court that ought to be removed, and one of them isn't Al Gunderson."

He flew back to Las Vegas with Oscar, and they chatted on the plane, apparently. And forgive me if I seem emotional at this point, because when Oscar called me up, he told me that on the plane, Weissich had told him, “My God. That Al Gunderson is just like an elephant switching flies off him.” And my heart just began beating. And it felt like a little bird that I once saw that was hurt and lying on the ground with its little chest beating and its heart pounding. And I didn’t feel like an elephant. I’d been put through this for months and months and months. And I guess maybe I got through it with Weissich thinking that I was pretty stoic. But when I realized I was finally out from under it, it was a terribly emotional experience for me. It was such a relief.

The thing that I want to underscore at this point is these creeps on the discipline commission that *get* on there for purposes of getting a foothold into politics, and that with all of their pride in themselves and all of their posturing, go through the motions of playing out the role of being commissioners on the commission on judicial discipline, and the torment that they cause good judges that really have not done anything wrong more than I did in regard to doing my job to argue about issues of principle in regard to cases that were before us. The torment that they subject judges to, with their *playacting*, which is all it is, all it is—*posturing*. The harm that they do those judges and their families . . . Truly, I can see very little, if any, good that ever came out of the discipline commission that I helped to formulate.

*But it’s still alive and well and operational today.*

It’s still alive and well and providing characters of the kind I describe with per diem

dividends and hotel rooms and free meals and prestige. Excuse me just a second.

*Sure. We are examining a cartoon which says, “Sometimes the dragon wins.”*

Yes. Well, when you refer to that cartoon, that has to do with the fact that the individual that I’ve mentioned, the justice whose social methodologies, to say the least, his reported letter-writing techniques, or strategies, it was commonly said that he wanted to see himself as the knight who was going to slay the dragon. And I think that’s probably a pretty fair characterization of how he wanted to perceive himself. So as you’ll see, that cartoon, which was given to me by a staff member, shows the dragon lying up against a tree, obviously rather sated with his belly full, picking his teeth with the lance from the knight, and bits of the knight’s armor lying around, and the caption is that “Sometimes the dragon wins,” which was a reference to the fact that sometimes people that set out to be heroes, it doesn’t work out for them very well. Like the song that says, “Trying to be a hero, winding up a zero”—that was a comment about our friend, the justice, on occasion.

But what it brings to mind, if you were interested, there was an attorney by the name of Pete Neumann in Reno, who brought an action that’s referred to in some of those clippings that you have. So let me have the file and I’ll look through it. I think I can find it rather quickly. OK. Here, there’s a reference, and I don’t see you have a date on this, but it says in this article here, “Last month . . .” the justice we’re talking about, “his insurance company paid a \$300,000 out-of-court settlement resulting in his being dismissed last month from a libel suit filed by Las Vegas lawyer Peter Flangas. The dismissal allowed Manoukian to bow out of a January



12 civil trial that would have determined if Manoukian wrote letters that Flangas claimed questioned his honesty and integrity." Let me see, there's a place in this article—oh, it says, "The past year provided a vindication of sorts for Gunderson, who clashed frequently with former Chief Justice Noel Manoukian, who had claimed for years that Gunderson generated serious problems on the high court." And then it goes on to talk about the fact that his insurance company had to settle the case for \$300,000 that alleged him having written poison-pen letters about Pete Flangas, one of the attorneys about whom the justice had written poison-pen letters.

And in the course of that lawsuit, Pete Neumann, Flangas's attorney, took the deposition, actually announced that he was going to use a famous psychiatrist in San Francisco as an expert witness to show the justice's liability. The psychiatrist was a man by the name of Martin Blinder, who is a renowned guy and a professor at one of the California universities in the medical school. And Blinder, in his deposition, says something that is pretty parallel to the caption of this cartoon, that what he sees in the poison pen letters is the desire on the part of the justice to be a hero, to portray himself as the brave, valiant person standing up to evildoers. And I would recommend, if you want to read a *very* interesting tract about this problem, if you contacted Pete Neumann, I'm sure he would be glad to run you a copy of Blinder's deposition, which is just fascinating. The man is wonderfully articulate. [laughter] It's just remarkable how well he articulates his thoughts and how cogently he incriminates the justice through his formulation of what he sees in the man's written work and in the poison-pen letters that surfaced regarding Pete Flangas and, for that matter, myself. And that was really what brought the insurance

company, I believe, to its knees—the fact that Blinder so cogently tied it all together. Now, there was forensic evidence that linked the poison-pen letters to the justice's typewriter and office. There was a guy by the name of Sherwood Morrill, who is one of the best and most renowned questioned document examiners—private questioned document examiners—in the country.

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## DUTIES OF THE CHIEF JUSTICE

*It says in the record here, according to your résumé, that you actually served three terms as chief justice of the Nevada Supreme Court, from 1975 to 1977, 1981 to 1983, and 1987 to 1989. Could you please explain to me how that occurs? Are you elected, or is it a rotational system, or are you appointed?*

Well, it's the system by which the chief justice is invested in the Nevada Supreme Court and is a rotational system, but it's kind of an unusual rotational system. Now, understand, the constitution says not "who is senior," but "whose *commission* is senior," shall be chief justice.

And that means that since you get a new commission at the beginning of every term, your commission becomes senior during the last two *years* of your term. Now, when the court was enlarged from three to five members, that meant that not everybody became chief justice in the last two years of his or her term, because two people were coming up with commissions of equal rank at the same time many times. But when *I* went

on the court, my seat was the odd seat, so my commission *always* became senior by itself. So in the last two years of my term, I *always* became chief justice. It wasn't that people voted for me; it was just the way the system was structured.

*And your duties, then, as chief judge would differ in what ways?*

Well, as I say, you didn't assign the cases. You *did* have a responsibility preparing the budget, going over and testifying on the budget, getting the legislation that the court needed agreed upon within the court, getting it formulated, and getting it introduced, and then going over and trying to promote it before the legislature by testifying about it. When lawyers wanted to see somebody to get an order, they would have an obligation to go to the chief justice or the justice senior in commission who was available. And since when I came on the court, very frequently I was the only judge around, I became the judge that lawyers came to see, as I've indicated.

But that was in default of other judges that should have been taking care of those orders being available. And, of course, you preside at the hearings and call on the attorneys and see to it that the attorneys don't exceed their time limits and grant extra time if that seems appropriate and, in general, conduct the proceedings in an orderly way.

*My little guide to questioning talks about the office of chief judge or chief justice, and it talks about advantages, prerogatives, disadvantages, and challenges. I wonder if there are any things that you wish to comment on in that area.*

[long pause] There's no special comments.

*Nothing there. OK. [laughter] This one caught my attention, from June of 1987. It's talking about the Supreme Court justices discussing a bid by professional gambler Ken Uston to force the state gaming commission to spell out its position on card counters in casinos. And it says here, "Chief Justice Gunderson told Kevin Karp, the attorney for Uston, that he thought casinos had the right to choose who they play with. Declining to play with an individual who has the mental skills to change the odds in his favor is a valid reason." And then you went on—and I thought this was a wonderful comment—"You also asked whether a casino could toss out someone who showed up wearing a loincloth and sporting a chicken on his head."*

[laughter] Yes. Well, I got the idea for the chicken on his head, because when I was living in Chicago working with the Federal Trade Commission, every now and then we would see this strange individual get on a bus, and he would have his chicken on his head that somehow or another he had trained to do that. So that's where I got that idea. And so it

is not totally a figment of my imagination. I don't remember that that individual ever had on a loincloth when he got on the bus, but he did have his chicken travel with him regularly.

But, it's an interesting question about what people should be allowed to do in the exercise of their right to public accommodations, and that was a case that certainly brought that issue to the fore.

*Apparently, he won too much money, and the casinos didn't care for that.*

Obviously, that was not a case that was of great, enduring social consequence, from my perspective. [laughter]

[laughter] Right.

It wasn't like the university food service case that I told you about before.

*No. Right. In September of 1987, the Review-Journal talks about a case having to do with the Yellow Checker Cab Company, owned by Milton Schwartz. And it talks about the state shield law, the press's right to confidentiality in the press. Apparently, some things were going on that this gentleman was concerned about. "Chief Justice Gunderson questioned whether Schwartz needed to have the reporter notes, the notes of a newspaper reporter, in order to prove his case in court." And apparently, the issue had to do with shielding the Greenspuns and from having to come forth with this evidence. Is it the case in which Ty Hilbrecht was involved, or was that another one, having to do with the taxicab industry?*

No. The case that I had that involved Norm Hilbrecht was not that case.

*Was not this case. OK.*



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## DECISION TO LEAVE THE COURT

*In 1988, you were planning on leaving the bench at the end of your term to begin a new career as a law professor, and you had accepted an appointment as senior professor at the Southwestern University School of Law in Los Angeles, and you would be completing your third term in January of 1989. I wonder if you'd comment on what it was in your thinking now that caused you to make the decision to leave the court when you did.*

Well, I was coming up to the end of my third term, and at that time I was going to be just about sixty. I'd always thought that I would like to teach law; it had been a suppressed ambition of mine. And I figured if I were ever going to do that, I better get on with it and do it at that point in time. I've been on the board of visitors at Southwestern University School of Law, and so I simply asked them if they would like to hire me, and they did. So I left the court.

*And apparently some folks were surprised that you stepped down when you did, according to the press.*

Well, a guy that's camped in the traditional chief justice's chambers as long as I had, [laughter] and according to Darrel Kelly of the *Reno Gazette-Journal*, you can't imagine if I'd held that adversely that long, it's surprising that I'd give it up for *any* reason. [laughter]

*One comment that was made here in the same time frame—this was in March of 1988—a gentleman named Jeffrey Hazard, who was a Yale University law professor, is quoted here in the Gazette-Journal. You said something to the effect that a person who was in a kind of a lame-duck status would have a tendency . . . it might have an influence on normal judging. But he says that he didn't consider you to be normal in that sense at all. My sense is that he felt that you weren't about to quit and lay back on the job just because you were coming toward the end of your term.*

Well, I'm not sure what Jeffrey Hazard would consider normal. If we're talking about what I consider Jeffrey Hazard, [laughter] I considered him a gas bag. He is not a person

for whom I have unmeasured respect. If I don't meet Jeffrey Hazard's criteria for normality, I'm rather pleased about that.

*OK. [laughter] A local attorney, Brian McKay, in the same article says that "Gunderson is a very active jurist who has felt the court should play an increasingly active role in society." And Felix Stumpf, dean of the Old College law school, said that "Gunderson is a capable, tough guy. 'Totally professional performances from lawyers who appear before him,' said Stumpf, who had known Gunderson for fifteen years at that time." "Forceful, direct type of individual. He can definitely put you on the hot seat," said a Washoe attorney named Mills Lane.*

Well, first of all, Felix Stumpf is, in my opinion, an intellectual giant. He created the California bar's program for continuing education of the bar. He came over here kind of as a refugee, because he was the victim of his own success. He made such a big thing out of the California CEB program that people got to fighting over it. And, as a result, [laughter] Felix decided to come over here and take refuge as academic director at the National Judicial College in Reno, where he did an outstanding job. And that's when we became friends, so his comments, which I'd never seen or heard before, mean a great deal to me.

Brian McKay was our attorney general, and again, his favorable comments mean a lot more to me than anything that Jeffrey Hazard might say about me.

And Mills Lane, who was district attorney up there and later a judge in Washoe County, I would be more favorably inclined to embrace Mills Lane's statements than anything Jeffrey Hazard might say about me. And I might say that Mills Lane and I have had some differences, but it's nice to know that he put

them aside in commenting about me to the newspaper. He recently had a stroke, and I certainly hope that that proceeds well for him, that he recovers and has a long and successful career. You know, he was a boxing referee here, and you probably saw him referee a number of major fights, if you're a boxing fan. But he was an interesting guy, and I wish him well.

Beyond that, I don't have much to say about that, except it's nice of you to bring those favorable comments to my attention.

*Sure. Stumpf went on, just as another comment, which relates to some things we talked about earlier. Says that, "Since Gunderson has been in the lead to learn the latest methods of dealing with high volumes of appeals, I've been amazed from the managerial point of view they've been able to do as much as they have and made a significant contribution to the state's jurisprudential system over the years." And "Gunderson seemed more managerial than ideological. So as a result, when Gunderson leaves the bench, the direction the court might take in legal decisions remains uncertain." So he wasn't sure what the future might hold at that time.*

No. Well, speaking again about Felix Stumpf himself, rather than about what he said about me, as I say, I consider Felix Stumpf really quite an extraordinary human being. He graduated, I believe, *magna cum laude* from Harvard when he was sixteen and then went on to Harvard Law School and in a very short period acquired his law degree. And then went on to an illustrious career, first, in California with their continuing legal education of the bar program, and then as academic director of the National Judicial College. *And then* did quite a remarkable job in creating a credible law school without much funding, there in an

old building up there in Reno, with just a few supporters.

One casino owner in particular supported the college, a guy by the name of Warren Nelson. And the interesting thing was that this unaccredited law school, when it graduated its first class, Felix conducted a bar review course for its graduates, and I believe every one of them passed the bar. [laughter] Very remarkable.

Yes, it is.

So he was a pretty remarkable guy.

*I'm looking here at an article from February of 1989, in which you talked about when you were in the process of stepping down. It was kind of like your closing statement. And it talks here about a staff attorney, supervising staff attorney named Sharon Gronberg. You said some nice things about her. Apparently, she was going to practice law at that time over in Riverside.*

Yes. She's with the court over there now.

*And you said something about having been willing to have had a daughter like her. [laughter]*

She was a love, I'll tell you. She was great, Sharon was.

*So you went down then to become a law professor, but you didn't stay too long with it, apparently. Was it your health that brought you back?*

Well, to a large extent it was my health. I sustained a heart attack just a few days after I left the court. And that spring, before I assumed my duties with Southwestern, I

went through an extensive regimen at the Washoe Medical Center of rehabilitation and got myself in fairly good shape before I went down to assume my teaching duties at Southwestern. When I was down there, I continued to have some heart episodes and a couple of times got carted off to the hospital, and decided that while my wife was coming down to visit me on weekends, flying down to be with me, it wasn't a good place for me to be alone.

So with rather substantial regret, I decided to come back. And since that time, I've taught down there as an adjunct professor.

*And you had other employment following that.*

Yes

*Here it shows a 1992 article, which says that you had an association with the Greenspun Management Enterprises, furnishing services to the Las Vegas Sun and other companies owned by the Greenspun family. What was that assignment?*

Well, I don't think it's any secret that I do some work for the Greenspuns on occasion and that I do legal consulting, and I talk to them about legal matters from time to time.

*Does this continue to this day? Do you still have this association with them?*

Yes.

*OK. Here's one more of somebody complaining. Review-Journal, 1992, October 6: "Justice Gunderson wields power gavel into his retirement," and so forth.*

[laughter]

*Apparently, Justice Mowbray had some ugly things to say here about what was going on.*

OK. You got something here written by A. D. Hopkins of the *Review-Journal*. I call him V. D. Hopkins. I hasten to say I don't know what his health problems may be, but I see A. D. or V. D., whatever his name is, is writing about . . . and had helped write the internal memorandum about something or other here.

Without knowing what Mowbray really said, I won't criticize it, but according to Mr. Hopkins, "Justice Mowbray has accused Gunderson of orchestrating the feud that forced Mowbray to *not* seek reelection to a post that he has held for twenty-five years." Well, of course, it's obvious that the justice that I had talked to you about before is not the only one that feels that there are vast conspiracies out there against him in the world somewhere.

And this is apparently a manifestation of Justice Mowbray's affliction. He suggests that I helped write an internal memorandum that limited his authority. I don't know how he thinks he knows that. I guess, as I read this, the other justices indicate that they didn't feel I was trying to influence them against Justice Mowbray, so I guess what we have here is just a manifestation of his fantasies.

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## GROUP DYNAMICS ON THE COURT

*Interesting. Justice Gunderson, despite my best efforts, I have probably failed to ask you something that I should have asked for the record. What have I not asked you that I should have that you would wish to comment upon for the purposes of this interview?*

Well, I would say that as you've undoubtedly seen through your experience on university faculties and on faculty committees, the dynamics in small groups is a very interesting thing. And some of the things that I have learned on the Nevada Supreme Court really are more related to small-group theory than they are to law, or even to political science or legal procedure. One thing I'll say is that in that regard, a thing that struck me over the course of the time I was on the court that I'd like to record at this point for the benefit of anybody who may be trying to understand what judicial process is all about, is the fact that there is a *tremendous* difference that occurs whenever a court changes so much as one member. When a court loses a member, and a new member is

substituted onto the court, it's more than just a matter of losing a member or interjecting a new member. The entire dynamic of the court changes.

So when Dave Zenoff, who was a wonderful colleague, left the court, and the justice we've talked so much about, who was identified by various methodologies as writing poison-pen letters, when he was substituted for Dave Zenoff, the court, so far as I was concerned, changed dramatically. In my opinion, we had a very well-functioning court that functioned pretty well despite the presence on it of people that had serious limitations. For example, we had an individual that had been put on the court who's viewed favorably in some of the press clippings that you have. And that individual was a guy that acted in many respects as I believe no justice of a state appellate court should act. He was severely addicted to drink; he felt unduly free to fraternize with the female employees on the court in a way that I considered to be inappropriate. He got in all sorts of problems, many of them related to incidents involving

driving while drunk. And the interesting part of it was that that individual actually *benefited* every time that he got himself in trouble, because his friends over in Reno would start the drumbeat that, well, it was all right that he go out and relax a little bit and have some fun, because he was really such a wonderful justice, and he was *so* smart, and that he was so quick with his work that even though he was absent from the court so often, it really didn't make any difference, that because of his *tremendously* acute mind, which was far beyond that of any of the rest of us, he was able to engage in all of these little diversions and still get his work done.

Now, my personal belief is that this guy was clinically certifiable as a sociopath. And if you've ever read a book called *The Mask of Sanity* by Hervey Cleckley, Cleckley delineates the classic sociopathic or psychopathic personality and what the hallmarks of that really *are*. But while Dave Zenoff was on the court, because he [laughter] was a very flexible, funny, good-natured, smart guy, he was able to keep the justice we're talking about—the guy I consider to be a psychopath—he was able to keep him under control and keep him relatively productive and keep him from causing too much problem. However, when Dave left and was replaced by the individual that later had to settle the case for \$300,000 with Pete Flangas for writing poison-pen letters about him, when Dave left, the composition of the court changed far more than just the matter of losing Dave or getting this guy that ultimately was identified with the poison-pen letters onto the court. The entire dynamic of the court changed.

So what we had was, with the new individual coming in, we had a new majority that, as I see it, was deviant and negative in

their approach to many things. Whereas before, with me and Dave Zenoff and with Cameron Batjer, we had a majority that was socially positive in our goals. So when Dave left and the new man came in, as I see it, getting back to the Barber typology, Dave Zenoff was very definitely an active positive. A positive, energetic, good-humored man who enjoyed what he was doing and was flexible in his manner of going about things. Cam Batjer, as I see him, although I love the man, he was a passive positive in Barber's typology. He was a positive, decent man but not a guy that was going to be assertive and courageous in standing up against something that he thought was wrong.

I saw him the other night, and I think the world of him. But while he was a wonderful colleague, as long as he had people that loved him and supported him on the court and didn't bully him and didn't scare him, he was a great colleague. But when people with ugly goals took control of the court, as essentially happened when Dave was replaced by this individual who was later identified with the poison-pen letters, then Cameron was not as great a guy. You would have rather had another Dave Zenoff rather than have him.

And if he reads this, I do want to underscore how much I really respect him, because he was a *good, fine* supreme court justice as long as he had a good, nurturing environment in which to operate.

So not only do I want to say that a court can change overnight when the dynamic is changed by just the interchange of one person for another, and a court can probably be a very good court when it has some deviant members, and as long as it has a positively oriented majority, but when it has a negative or deviant majority, then you're going to have problems.



A while back, the Oklahoma Supreme Court was identified with the fact that they had a majority of people on that court who were actually taking bribes, not just engaging in this behavior.

And I think another thing ought to be said for whatever good it may have for anybody that is thinking about the problem of selection. You know, it, I think, is unfortunate that we have arrived at the point where in order to assuage the desires of young people, appointing authorities like governors are drifting in the direction of appointing young people to the bench, which may be fine when you appoint them to lower court benches. But I think when a young person, like the justice that we've talked about, who's identified with the poison-pen letters, when that person is put on the bench as a district judge at the age of, I think, for him was thirty-five and then elevated to the supreme court bench, I think, at not much beyond forty, if what you get is a guy, or a woman, I suppose, who has a lot of incentive to say, "Gee, if I've gone this far, all right at this age, if I just aggrandize myself and make myself noticed and push myself up the ladder, who knows what may happen for me before it's all over. I could wind up on one of the circuit courts or even perhaps on the United States Supreme Court."

And in the older days of England and this country, I think the tendency was to put mature people on the bench. These were not only people who had some qualification by experience, but they were also people who realized that maybe they had gone as far as they were likely to go, and maybe they ought to just sit there and do their job in a measured, sensible, compassionate way.

There was a British guy who wrote an essay that I always remember that contrasted bureaucrats in America with bureaucrats in

England, saying that British society was more likely to generate good bureaucrats than American society was. I think what he said was applicable to judges also. Because he said, [paraphrasing] In England our bureaucrats are middle-class people who have a few bucks, a few dollars, a few pounds, I guess I should say, [laughter] to augment the salary that they get. So they aren't totally dependent upon the salaries that they get from the government. And, in essence, he said, They know that this is as far as they're going. They're not going any further. They know that no matter how much they beat their chests and attract attention to themselves, no matter how much they may want to change it, *this* is the highest social position they're liable to have.

So now comes the key. He said, "So *these* people are well constituted to serve as buffers between the rule of law and the individual, to apply the law to the individual." They're *not* there screaming to pay attention to themselves or trying to bring attention to themselves to how they *decide* a case. They are simply trying to decide it in a humane, civilized way. That's the kind of judge I think that we want. And the problem we have is we don't know how to get them, but we're doing a lot of things that assure that we *won't* get them—when we reach out, and we appoint young, not very well-experienced people, who just hope that maybe they'll be able to go a little farther by how they attract attention to themselves.

So that's my last comment.

*That was very interesting. Well, I sure appreciate you're spending the time with us. I think this has been a great contribution to the project. I'm looking forward to reading over the transcript, once we have got it all typed up.*



I would suggest that you may want to try to make the effort to talk to Tom Steffen, who's up in Provo, Utah—he's living up there now—a wonderful colleague, a very able guy; and Charlie Springer, who's up in Reno. Charlie is quite accessible. I know the material you've been looking at contains references to them, and you'd probably find what they say interesting.

*And enlightening. Yes. Well, I sure appreciate your spending the time.*

